

ARKANSAS CODE OF 1987 ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 27B 2008 Replacement TITLE 26: TAXATION (CHAPTERS 58–81)

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2007 Regular Session. Annotations are to the following sources:

Arkansas Advance Reports through 2007 Ark. LEXIS 685 (December 13, 2007) and 2007 Ark. App. LEXIS 869 (December 12, 2007).

Federal Supplement through December 12, 2007.

Federal Reporter 3d Series through December 12, 2007.

United States Supreme Court Reports, through December 12, 2007.

Bankruptcy Reporter through December 12, 2007.

Arkansas Law Notes through the 2006 Edition.

Arkansas Law Review through Volume 60, p. 353.

University of Arkansas at Little Rock Law Review through Volume 28, p. 744.

A.L.R. 6th through Volume 17, p. 757.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 26

TAXATION

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RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d, State Tax., **C.J.S.** 84 C.J.S., Tax., § 68.
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- 26-58-118. Reports — Transporters.
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- 26-58-120. Arkansas Forestry Commission — Access to information — Investigations.
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- 26-58-123. Lien for taxes, penalties, and costs upon natural resources and equipment.
- 26-58-124. Distribution of severance tax generally.
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- 26-58-126. Severance tax rate for lead ore.

Cross References. Severance tax on sand and gravel for highways, § 27-67-210.

Preambles. Acts 1977, No. 456 contained a preamble which read: "WHEREAS, Section 4 of Act 136 of 1947 requires the producer or person severing natural resources to report monthly to the Commissioner of Revenues natural resources severed during the preceding month and pay the taxes thereon and Section 7 of Act 136 of 1947 requires the purchaser of severed natural resources to report monthly natural resources purchased by him and makes the purchaser liable for any unpaid severance taxes thereon; and

"Whereas, the requirement that both the producer and the purchaser file the monthly report causes a great deal of duplication of effort and such dual reporting is not necessary to assure that the proper severance taxes are paid; and

"Whereas, it is in the best interest of the producers and the purchasers that such duplication of effort be removed by providing that either the producer or the purchaser shall file the monthly report and pay the taxes but that both need not do so; "Now therefore ... "

Effective Dates. Acts 1947, No. 136, § 15: approved Mar. 3, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this act will correct a situation which otherwise may deprive the citizens of this state from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is

hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1947, No. 299, § 2: approved Mar. 19, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that a question has arisen as to whether or not Section 11 of Act 136 of 1947 has the effect of repealing certain of the provisions of Act 105 of 1939, thereby jeopardizing the funds otherwise collectible for operation of the Oil and Gas Commission; and in order that the operation of this necessary function of the State Government may continue without interruption it is necessary that this act take effect immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1949, No. 469, § 3: approved Mar. 29, 1949. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the taxing of severance of timber from the soil do not tax the severance of timber upon its proper basis; that great confusion has resulted due to the fact that timber is taxed upon the basis of the finished or manufactured product and not upon the basis of measure used in the severance of timber; therefore, this Act being necessary for the preservation of the public peace, health, safety and for the fair and impartial administration of justice an emergency is hereby declared to exist and this Act shall take full force and effect from and after its passage."

Acts 1953, No. 42, § 13: approved Feb. 9, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the inadequacy of the state's program of fire control with respect to forest trees was graphically demonstrated in the immediate past months when losses, both actual and potential, by forest fires amounted to untold millions of dollars, and threatened the lives of many people living within the fire areas; and that only the provisions of this act will provide funds in amounts sufficient to provide comprehensive protection of forest trees, and reduce the

incidence of losses as aforesaid in the future. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1955, No. 100, § 4: approved Feb. 23, 1955. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the inadequacy of the State's program of fire control with respect to forest trees was graphically demonstrated in the immediate past months when losses, both actual and potential, by forest fires amounted to untold millions of dollars, and threatened the lives of many people living within the fire areas; and that only the provisions of this act will provide funds in amounts sufficient to provide comprehensive protection of forest trees, and reduce the incidence of losses as aforesaid in the future. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1957, No. 21, § 3: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, the University of Arkansas and the other state-supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take

effect and be in full force from and after the date of its passage and approval."

Acts 1957, No. 150, § 2: Mar. 5, 1957. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act No. 22 of 1957 are uncertain as to the method of determining the severance tax due on oil produced in this State, and that the immediate passage of this Act is necessary in order to clarify such uncertainty. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 263, § 2: Mar. 13, 1957. Emergency clause provided: "It is hereby determined by the General Assembly that this Act is necessary for the immediate preservation of the public economy, peace, health and safety. Therefore, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 93, § 2: July 1, 1959.

Acts 1967, No. 379, § 3: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the five percent (5%) severance tax levied on the market value of such mussel shells is an undue tax burden upon the severers of such shells; that such a tax stifles competition and makes it impossible for the Arkansas mussel shell industry to compete with the mussel shell industries of neighboring states who are not so heavily taxed; and that only by the passage of this act can this burden be lifted and competition restored. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 147, §§ 2, 3: Apr. 1, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that inequity presently exists in the determination of market value, for tax purposes, of salt water for bromine and products derived from the same salt water used in the bromine production so that it is impossible to properly administer and enforce the law pertaining to same. Therefore, an emergency is hereby declared to

exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved Feb. 22, 1971.

Acts 1977, No. 388, § 7: Mar. 10, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest, pasture and rangeland fire protection and to defray the costs of its programs for the development, protection and preservation of the forest, range and pasturelands in the State and that the immediate passage of this Act is necessary in order to enable the respective County officials to perform their duties under this Act in order that taxes on timberlands and rangelands, but shall not include pasturelands due for the calendar year 1977 may be placed on the tax books for collection in 1978. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 456, § 3: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires both the producer and purchaser of natural resources to file a monthly report with the Commissioner of Revenues; that this requirement causes duplication of effort and is not necessary to the proper enforcement of the severance taxes; that this Act is designed to permit either the producer or the purchaser to file the monthly report and pay the taxes and to provide that both need not do so; that this Act should be given effect at the earliest possible date in order to correct this undesirable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 617, § 3: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in urgent need of additional funds to carry out its statutory functions and duties; that the Forestry Commission de-

rives its financial support from the severance taxes on timber and timber products; and that this Act is designed to increase severance taxes on timber and timber products and to thereby provide the funds necessary for the Forestry Commission to effectively and efficiently carry out its functions and duties and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 730, § 18: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 938, § 22: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that certain amendments to Act 750 of 1973, the Revenue Stabilization Law are essential to the continued financial operation of state government; therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 254, § 14: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present severance tax on timber is difficult to administer efficiently; that the present method of computing, reporting and remitting the severance tax on timber is vague and cumbersome and places an unreasonable burden on various

areas of the timber industry; that the revision of the severance tax provided for herein is designed and intended to clarify and simplify the severance tax on timber so as to make it more enforceable and less burdensome; that in order to assure a smooth transition from the current procedure for collecting and remitting the severance tax on timber as prescribed herein and in order to enable the Commissioner to promulgate rules, regulations and forms for the enforcement of this Act, it is necessary that this Act be given effect on a specified date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 761, § 4: Jan. 1, 1984.

Acts 1995, No. 356, § 5: emergency clause failed. Emergency clause provided: "It is hereby found and determined by the General Assembly that wells used to inject saltwater or other effluents for pressure maintenance or secondary recovery purposes are not included under current law for purposes of calculating a rate of severance tax which is based upon the quantity severed and that this act will include these wells in the calculation for severance tax purposes. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 232, § 6: Feb. 21, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Revenue and Taxation and in its place established the House Interim Committee and Senate Interim Committee on Revenue and Taxation; that various sections of the Arkansas Code refer to the Joint Interim Committee on Revenue and Taxation and should be corrected to refer to the House and Senate Interim Committees on Revenue and Taxation; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and

safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 736, § 11: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 2001, No. 283, § 9: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential govern-

mental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2007, No. 1229, § 17: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

Acts 2007, No. 1245, § 17: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

CASE NOTES

ANALYSIS

In General.
Applicability.

In General.

Acts 1923, No. 118, levying tax on privilege of engaging in business of severing timber from soil, was a privilege tax on

the occupation and not a property tax. *Floyd v. Miller Lumber Co.*, 160 Ark. 17, 254 S.W. 450, 32 A.L.R. 811 (1923); *Miller Lumber Co. v. Floyd*, 169 Ark. 473, 275 S.W. 741 (1925), *aff'd*, 273 U.S. 672, 47 S. Ct. 475, 71 L. Ed. 833 (1927) (decisions under prior law).

of severing timber from the soil applied to individuals as well as to corporations engaged in this business. *Floyd v. Miller Lumber Co.*, 160 Ark. 17, 254 S.W. 450, 32 A.L.R. 811 (1923) (decision under prior law).

Applicability.

The tax levied by Acts 1923, No. 118 on the privilege of engaging in the business

26-58-101. Definitions.

As used in this subchapter:

(1) "Acquired", when used in reference to the severance tax on timber, means the time when timber is first weighed or measured by a primary processor after severance;

(2) "Director" means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(3) "Natural resources" means all natural products of the soil or water of Arkansas including, but not limited to, asphalt, barite, bauxite, chalk, chert, clay, cinnabar, coal, diamonds, fuller's earth, natural gas, granite, gravel, gypsum, iron, lead ore, lignite, limestone, manganese and manganiferous ores, marble, marl, mussel shells, novaculite, oil, ochre, pearls and other precious stones, phosphate, salt, sand, shale, slate, shells, stone and stone products, sulphur, titanium ore, and zinc ore;

(4) "Point of severance" means the place at which transportation of natural resources or timber has been or is about to be commenced for use or processing after being severed;

(5) "Primary processor" means any person, firm, corporation, or other entity engaged in business as a sawmill, chipper mill, stud mill, square mill, plywood or veneer mill, whole tree chipping mill, post, pole, or piling plant, charcoal plant, processed board mill, bolt working mill, pulp mill, planing or surfacing mill, or other mill or facility where timber first undergoes any processing after harvesting;

(6) "Producer" means any person, firm, receiver, or other fiduciary, corporation, or association, who or which engages in the business of severing natural resources or timber;

(7) "Purchaser" means any person, firm, receiver, or other fiduciary, corporation, or association, consignor, agent, or other dealer, by whatever name called, who or which acquires title outright or conditionally to any interest in severed natural resources or timber;

(8)(A) "Sever", "severed", or "severing" mean natural resources cut, mined, dredged, or otherwise taken or removed for commercial purposes from the soil or water.

(B) However, "sever", "severed", or "severing" as defined in this subdivision (8) do not apply to any natural gas returned to any

formation, in recycling, repressuring, pressure maintenance operation, or other operation, for the production of oil or any other liquid hydrocarbon.

(C) Further, "sever", "severed", or "severing" as defined in this subdivision (8) do not apply to any hydrocarbons in gaseous or liquid form which are burned, used, consumed, or otherwise employed in oil and gas operations including but not limited to, secondary recovery operations and fuel for engines in the same leasehold, drilling, or production unit, or unit area of a unitized reservoir from which such hydrocarbons are produced;

(9) "Timber" means either softwood or hardwood species of trees suitable for use as sawlogs, pulpwood, veneer bolts or billets, stave bolts or billets, and splits, handle and other bolts or billets including chemical wood, cross ties, posts, poles, piling, chips, charcoal, or any now known or hereafter discovered use of wood or wood pulp;

(10) "Time of severance" means the date on which transportation of natural resources or timber has been or is about to be commenced for their use or processing after being severed; and

(11) "Transporter" means any person, firm, receiver, or other fiduciary, corporation, or association, who or which transports natural resources or timber from the point of severance, or other point within, across, or out of the State of Arkansas.

History. Acts 1947, No. 136, § 1; 1949, No. 16, § 1; 1973, No. 493, § 1; 1983, No. 254, § 1; A.S.A. 1947, § 84-2101.

CASE NOTES

Severance.

Where crude oil produced was partly sold by the producer and partly used to generate steam for a well injection process to increase the productivity of the producer's wells, that portion of the oil used in the injection process was held to be subject to the severance tax, although it was not, and was not intended to be, sold, traded, or produced for commercial purposes. *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973) (decision prior to 1973 amendment).

Where a person had been engaged for many years in the business of cleaning out a substance known as basic sediment and

water from oil field storage tanks, he did not have to pay severance taxes when he removed the sediment from the tanks during his cleaning operation, since the oil contained in the sediment was worthless at the time of removal, and also since, for purposes of this subchapter, the time and place of the severance of this substance, which collected at the bottom of the tanks, was the same as for the oil in the upper part of the tanks. *Horton v. Gaddy*, 268 Ark. 183, 594 S.W.2d 848 (1980).

Cited: *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956); *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-102. Effect of subchapter on other laws.

Nothing in this subchapter shall be construed to affect, amend, or repeal § 15-71-101 et seq. and § 15-72-101 et seq.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-103. Liability for other taxes not affected by subchapter.

Payment of the severance tax shall not affect the liability of the producers for all state, county, municipal, district, and special taxes upon their real and other corporeal property.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-104. Arkansas Tax Procedure Act applicable.

(a) The tax levied in this subchapter is a "state tax" as that term is defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall so far as practicable be applicable to the tax levied by this subchapter and to the reporting, remitting, and enforcement of the tax.

History. Acts 1983, No. 254, § 11; A.S.A. 1947, § 84-2112.1.

26-58-105. Regulations and forms regarding severance taxes on timber.

The Director of the Department of Finance and Administration with the advice and approval of the Arkansas Forestry Commission shall develop and adopt appropriate regulations and forms to carry out the intent and purposes of this subchapter with respect to severance taxes on timber.

History. Acts 1983, No. 254, § 10; A.S.A. 1947, § 84-2111.1.

26-58-106. Permits to engage in business.

(a)(1) Any individual or firm desiring to engage in the business of severing natural resources or timber before entering the business shall make application to the Director of the Department of Finance and Administration for a license or permit.

(2) In a form of application to be prescribed by the director, the applicant shall state under oath his or her name and address, the business in which he or she desires to engage, and the counties in which he or she will carry on the proposed severing.

(b) The applicant shall be deemed by his or her application to have agreed:

- (1) To abide by the provisions of this subchapter;
- (2) To promptly pay when due the severance tax imposed by this subchapter; and

(3) That the severance tax imposed by this subchapter shall constitute and remain a lien on each unit of production until the severance tax is paid to the director.

(c) Upon the filing of the application, the director shall issue a permit for which no charge shall be made.

(d) Whoever shall engage in the business of severing natural resources or timber without first having made application for and securing the license or permit to engage in the business shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

History. Acts 1947, No. 136, § 3; 1983, No. 254, § 3; A.S.A. 1947, § 84-2103; Acts 2005, No. 1994, § 178.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (d).

26-58-107. Levy of tax.

(a) There is levied and there shall be collected from each producer of natural resources and each producer of timber in the State of Arkansas, a privilege or license tax to be known as "severance tax".

(b) The severance tax is to be paid to the Director of the Department of Finance and Administration.

History. Acts 1947, No. 136, § 2; 1959, No. 93, § 1; 1959, No. 129, § 1; 1967, No. 379, § 1; 1983, No. 254, § 2; A.S.A. 1947, § 84-2102.

26-58-108. Exception to imposition of tax.

The provisions of this subchapter shall not apply to nor shall any severance tax be required of or collected from an individual who occasionally severs natural resources or timber from his or her own premises to be utilized by him or her in the construction, repair, or maintenance of his or her own structures or improvements.

History. Acts 1947, No. 136, § 2; 1967, No. 379, § 1; 1971, No. 147, § 1; 1983, No. 254, § 2; A.S.A. 1947, § 84-2102.

CASE NOTES

ANALYSIS

County Highways.
Evidence.
Railroads.

County Highways.

County was not liable to state for severance tax where it removed gravel following purchase for use on highway. *Scurlock v. Greene County*, 223 Ark. 507, 266 S.W.2d 811 (1954).

Evidence.

In suit by state for royalty and severance tax alleged due Arkansas by holder of sand and gravel lease from the state, introduction of evidence as to nonnavigability of stream from whose banks the sand was taken was erroneous and highly prejudicial as tenant of the state could not be heard to dispute state's title. *Scurlock v. Clark*, 224 Ark. 160, 272 S.W.2d 58 (1954).

Railroads.

Railroad severing gravel from its land and using it to ballast and otherwise maintain its tracks was not engaged in business of severing natural resources for commercial purposes and not subject to tax. *McLeod v. Kansas City S. Ry.*, 206

Ark. 281, 175 S.W.2d 391 (1943) (decision under prior law).

Cited: *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956); *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-109. Tax additional to property tax.

The severance tax imposed by this subchapter is in addition to the general property tax.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-110. Additional privilege or excise taxes prohibited.

No other privilege or excise taxes in addition to the severance tax shall be imposed upon the right to utilize natural resources and timber.

History. Acts 1947, No. 136, § 11; 1947, No. 299, § 1; 1983, No. 254, § 9; A.S.A. 1947, § 84-2111.

26-58-111. Rate of tax.

The severance tax is to be predicated upon the quantity severed and at the following rates:

(1) On barite, bauxite, titanium ore, manganese and manganiferous ores, zinc ore, and cinnabar, fifteen cents (15¢) per ton of two thousand pounds (2,000 lbs.);

(2) On coal, lignite, and iron ore, two cents (2¢) per ton of two thousand pounds (2,000 lbs.);

(3) On gypsum not used for manufacturing within Arkansas into ultimate consumer's goods, or sold for manufacturing within Arkansas into ultimate consumer's goods, and chemical grade limestone, silica sand, and dimension stone, one and one-half cents (1½¢) per ton of two thousand pounds (2,000 lbs.);

(4) On crushed stone including, but not limited to, chert, granite, slate, novaculite, and limestone, and on construction sand, gravel, clay, chalk, shale, and marl, one cent (1¢) per ton of two thousand pounds (2,000 lbs.);

(5) On natural gas, three-tenths of one cent (0.3¢) per one thousand cubic feet (1,000 cu. ft.);

(6)(A) On oil, five percent (5%) of the market value at time and point of severance.

(B) However, whenever the production of oil from a well which is measured separately or from a group of wells which is measured separately, including any well or wells that are utilized for the injection of salt water or other effluents for pressure maintenance or

secondary recovery purposes, averages ten (10) barrels or less per well per day during any calendar month, the privilege or license tax on oil produced from that well or group of wells during that month shall be computed at the rate of four percent (4%) of the market value at time and point of severance.

(C) The Director of the Department of Finance and Administration shall have the power to promulgate such reasonable rules and regulations as shall be necessary to effectively enforce the foregoing provisions;

(7) On timber, the tax shall be collected, reported, and remitted by each primary processor and shall be computed on the weight of such timber as determined at the last time the timber is weighed prior to undergoing the first processing after severance thereof and shall be at the following rates:

(A) On all pine timber, seventeen and eight-tenths cents (17.8¢) per ton of two thousand pounds (2,000 lbs.);

(B) On all other timber, twelve and one-half cents (12½¢) per ton of two thousand pounds (2,000 lbs.);

(C)(i) If any primary processor of timber is unable to weigh the timber as required herein because an approved weight scale is not available, the primary processor shall use the following conversion factors to convert other measurements of timber to weight:

<u>PRODUCT</u>	<u>CONVERSION FACTORS</u>
SAWTIMBER:	
Pine	16,000 Lbs./MBF Doyle
All Other	16,000 Lbs./MBF Doyle
PULPWOOD:	
Pine	5,000 Lbs./Cord-128 Cu. Ft.
All Other	6,000 Lbs./Cord-128 Cu. Ft.
POSTS OR POLES:	
Less than 10' in length	30 Posts/Ton
POSTS OR POLES:	
10'—16' in length	15 Posts/Ton
POLES OR PILING:	
Greater than 16' in length	40 Lineal Ft./Ton
SPLIT CORDS	6,000 Lbs./Cord-128 Cu. Ft.
VENEER CORDS	5,000 Lbs./Cord-128 Cu. Ft.
HANDLE AND OTHER CORDS	6,000 Lbs./Cord-128 Cu. Ft.
CHEMICAL CORDS	6,000 Lbs./Cord-128 Cu. Ft.
WHOLE TREE CHIPS:	
Pine	5,000 Lbs./Cord-128 Cu. Ft.
All Other	6,000 Lbs./Cord-128 Cu. Ft.

(ii) If the above conversion factors are not appropriate for conversion of any particular measurement of timber to weight, the director, with the advice and approval of the Arkansas Forestry Commission,

shall develop an appropriate conversion procedure to produce equivalent rates;

(8) On diamonds, fuller's earth, ochre, natural asphalt, native sulphur, salt, pearls and other precious stones, whetstone, novaculite, and on all other natural resources, except gypsum, not otherwise specifically identified under the severance tax laws of this state, except mussel shells, five percent (5%) of the fair market value at the time of severance;

(9) On salt water whose naturally dissolved components, or solutes, are used as source raw materials for bromine and other products derived from the same salt water used in the bromine production, two dollars and forty-five cents (\$2.45) per one thousand (1,000) barrels, forty-two thousand United States gallons (42,000 U.S. gals.);

(10) On all other natural resources not otherwise specifically identified under the severance tax laws of this state, five percent (5%) of the market value at time and point of severance.

History. Acts 1947, No. 136, § 2; 1949, No. 469, § 1; 1953, No. 42, § 9; 1953, No. 322, § 1; 1957, No. 21, § 1; 1957, No. 150, § 1; 1957, No. 263, § 1; 1959, No. 93, § 1; 1959, No. 129, §§ 1, 2; 1967, No. 379, § 1;

1971, No. 147, § 1; 1977, No. 388, §§ 3, 4; 1981, No. 617, § 1; 1983, No. 254, § 2; 1983, No. 874, § 1; A.S.A. 1947, § 84-2102; Acts 1993, No. 25, § 1; 1993, No. 1156, § 3; 1995, No. 356, § 1.

CASE NOTES

ANALYSIS

In General.
Credits.
Oil.

In General.

Acts 1923, No. 118, § 5, prescribing special tax rates for bauxite, coal, and timber, were not repealed by amendment by Acts 1923, No. 681, prescribing a special rate for manganese ore. *Arkansas R. Com. v. Stout Lumber Co.*, 161 Ark. 164, 255 S.W. 912 (1923) (decision under prior law).

Credits.

The tax credit allowed against the severance tax by § 15-72-701, et seq. is for

the benefit of the oil producer only and is not for the proportionate benefit of the royalty owner. *P & O Falco, Inc. v. Riley*, 271 Ark. 562, 610 S.W.2d 255 (1980).

Oil.

Only wells that produce oil may be counted in calculating the average rate of production per well per month. *Pledger v. Ethyl Corp.*, 299 Ark. 100, 771 S.W.2d 24 (1989).

Cited: *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956); *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-112. Additional tax on coal — Disposition.

(a) In addition to the tax levied by § 26-58-107, there is levied an additional severance tax on coal in the amount of eight cents (8¢) per ton of two thousand pounds (2,000 lbs.). The additional tax shall be collected in the same manner as prescribed by this subchapter.

(b) The additional tax shall be deposited into the State Treasury to the credit of the Constitutional Officer's Fund and the State Central Services Fund.

History. Acts 1983, No. 560, § 1; A.S.A. 1947, § 84-2102.11.

26-58-113. Additional tax on stone and crushed stone — Deposit and allocation of funds.

(a) There is levied and there shall be collected from each producer of the following natural resources in this state an additional privilege or license tax to be known as an additional severance tax.

(b) The additional severance tax is to be paid to the Director of the Department of Finance and Administration.

(c) The additional severance tax on stone and crushed stone, including but without limitation thereto, chert, granite, slate, novaculite and limestone, excluding limestone used for agricultural purposes, construction sand, gravel, clay, chalk, shale, and marl, is to be predicated upon the quantity severed at the rate of three cents (3¢) per ton.

(d) The tax levied by this section shall be in addition to the severance tax levied by § 26-58-107.

(e)(1) All taxes, penalties, and costs collected by the director under the provisions of this section shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(2) The Treasurer of State on or before the fifth of the month next following the month during which such funds shall have been received by him or her shall allocate the same in the manner provided in this subdivision (e)(2):

(A) Three percent (3%) of the amount thereof to the General Revenue Fund to be used for defraying the necessary expenses of the state government; and

(B) Ninety-seven percent (97%) of the amount thereof, as follows:

(i)(a) Twenty-five percent (25%) of such amount of the severance taxes, penalties, and costs, except those on timber and timber products, shall be special revenues and shall be allocated to the County Aid Fund.

(b) On or before the tenth of the month following the end of each calendar quarter, the Treasurer of State shall remit by state warrants to the various county treasurers all such funds received by the Treasurer of State during such quarterly period and transferred to the County Aid Fund in the proportions thereof as between the respective counties that, as certified by the director to the Treasurer of State, the total severance tax produced from each such county bears to the total of such taxes produced from all counties.

(c) Upon receipt of any such taxes, each county treasurer shall credit fifty percent (50%) of that amount to the county general school fund and fifty percent (50%) of that amount to the county highway fund, for use for the same purposes as other moneys credited to the respective said future funds; and

(ii)(a) Seventy-five percent (75%) shall be special revenues and shall be credited to the County Aid Fund.

(b) On or before the tenth of the month following the end of each calendar quarter these special revenues shall be remitted by the

Treasurer of State by state warrant to the various county treasurers on the basis of the formula applied in allocating or distributing county aid highway funds from the County Aid Fund.

(c) All such funds so received by each county shall be used exclusively for construction, reconstruction, maintenance, and repair of county roads and bridges in the county.

(f) The additional severance taxes levied by this section shall be collected in the manner prescribed by this subchapter.

(g) The violation of this section shall subject the violator to the penalties prescribed by this subchapter.

History. Acts 1983, No. 761, §§ 1, 2;
A.S.A. 1947, §§ 84-2102.12, 84-2102.13.

26-58-114. Monthly reports and payment of tax by producers, primary processors — Cancellation of permit upon cessation of business — Penalty for noncompliance.

(a) Each producer of natural resources and each primary processor of timber within twenty-five (25) days after the end of each month whether or not he or she shall have actually severed natural resources or timber during the preceding month shall file with the Director of the Department of Finance and Administration a report setting forth in a form to be prescribed by the director:

(1) The kind of natural resources or timber, if any, severed by such producer or processed or acquired for processing by such primary processor during the next preceding month;

(2) The point of severance thereof;

(3) The gross quantity so severed and the cash value thereof;

(4) The amount of severance tax due; and

(5) Such other information as the director may reasonably require for the proper enforcement of the provisions of this subchapter.

(b) The report shall be verified by the producer or primary processor himself or herself in the instance of an individual producer or primary processor and by a member or officer or the manager of the producer or primary processor in all other instances.

(c) The payment of the full amount of the severance tax appearing to be due from the report shall accompany the report.

(d) Within ten (10) days after any producer or primary processor shall have ceased operation with the intention of no longer engaging in the business of severing or processing natural resources or timber, the permit theretofore issued shall be returned by him or her to the director for cancellation, but any such producer or processor whose permit shall have been so cancelled may engage in such business upon the filing of a new application with and the issuance of a new permit by the director.

(e) Any producer or primary processor who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each such offense, and the

willful false swearing as to the contents of any such report shall constitute perjury and shall be punishable as such.

History. Acts 1947, No. 136, § 4; 1947, No. 336, § 1; 1983, No. 254, § 4; A.S.A. 1947, § 84-2104.

26-58-115. Reports and payment due from producer actually severing or from primary processor — Methods of accumulating tax payment — Penalty for noncompliance.

(a) Except as otherwise provided in this subchapter, the monthly report required by § 26-58-114 shall be filed and the payment of the severance tax shall be made by the producer actually severing the natural resources whether as owner, lessee, concessionaire, or contractor and, in the case of severance taxes on timber, the monthly report required by § 26-58-114 shall be filed and the severance tax shall be paid by the primary processor.

(b) The reporting taxpayer shall collect or withhold out of the proceeds of the sale of the natural resources severed the proportionate parts of the total severance tax due by the respective owners of the natural resources at the time of severance.

(c) Every producer actually operating any oil or gas well, quarry, or other property from which natural resources are severed but under contract or other obligation in which direct payment to the owner of any royalty, excess royalty, or working interest, either in money or in kind is required, is authorized, empowered, and required to deduct the amount of the severance tax in respect thereto from any such royalty or other interest before making the direct payment.

(d) Notwithstanding the sale or delivery, all severed oil or gas sold or delivered to any pipeline company for transportation by it through pipes connected with the oil or gas well of the owner is subject to the severance tax on the severed oil or gas.

(e) A primary processor of timber shall be responsible for the payment of severance taxes on all timber processed or acquired for processing by him or her whether or not the primary processor collects or withholds the tax from the producer.

(f) Any producer or primary processor failing or refusing to comply with any provision of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

History. Acts 1947, No. 136, § 5; 1983, No. 254, § 5; A.S.A. 1947, § 84-2105; Acts 2005, No. 1994, § 179; 2007, No. 827, §§ 232, 233.

Amendments. The 2005 amendment inserted “or her” in (e); and substituted “violation” for “misdemeanor” in (f).

The 2007 amendment inserted “required by § 26-58-114” in two places in (a); and substituted “is subject to” for “shall be liable for” in (d).

CASE NOTES

ANALYSIS

Credits.

Liability for Payment.

Credits.

The tax credit allowed against the severance tax by § 15-72-701, et seq. is for the benefit of the oil producer only and is not for the proportionate benefit of the

royalty owner. *P & O Falco, Inc. v. Riley*, 271 Ark. 562, 610 S.W.2d 255 (1980).

Liability for Payment.

The lessor of oil and gas lands is not liable for such a tax. *McFarlane v. Giller*, 174 Ark. 94, 294 S.W. 3 (1927) (decision under prior law).

Cited: *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-116. Purchasers' reports and payment of tax — Penalties for noncompliance.

(a) Unless relieved in advance by the Director of the Department of Finance and Administration in writing from doing so, each purchaser of natural resources shall file with the director upon forms prescribed by the director and within twenty (20) days after the end of each month:

(1) A verified report showing the names and addresses of all producers from whom such purchaser has acquired natural resources during the respective month;

(2) The types and total quantity of each type of the natural resources so acquired and the purchase price thereof; and

(3) Such further information as the director reasonably may require for the proper enforcement of the provisions of this subchapter.

(b)(1) It is the duty of each purchaser of natural resources to ascertain in advance of permitting the natural resources so purchased to be processed or otherwise changed from the natural state thereof at the time of severance or to be transported for the purpose of such processing or other change that the severance tax upon the natural resources has been paid.

(2)(A) The purchaser shall be primarily liable for any unpaid severance tax in the event of failure to make such advance ascertainment.

(B) However, the purchaser as a condition to permitting the processing or other change of such natural resources as to which the severance tax shall not have been paid by the producer may himself or herself pay such tax either in advance or, with the advance written approval of the director for cause shown to the director, within twenty (20) days after commencing the processing or other change of the natural resources or the transportation thereof for such purpose.

(c)(1) The removal by the purchaser of natural resources to any point of concentration or assembly, either within or without the state, without the severance tax having been previously paid by the producer or such purchaser, unless the director shall have given advance written approval therefor as aforesaid shall be deemed a fraudulent concealment of the whereabouts of such natural resources with the intent to avoid the payment of such tax.

(2) Each such removal by the purchaser and any failure by the purchaser to file the monthly reports as provided in this section shall

constitute a separate offense and shall subject the purchaser to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(3) The willful false swearing as to the contents of any monthly report shall constitute perjury and shall be punished as such.

(d)(1) The removal by the producer, purchaser, or primary processor of any timber to any point outside the state without the severance tax having been paid thereon, unless the director shall have given advance written approval thereof, shall be unlawful.

(2) Each failure of a producer, purchaser, or primary processor to file a monthly report as required in this section shall be unlawful.

(3) Each such removal or failure to file a monthly report shall be a separate offense punishable by a fine of at least fifty dollars (\$50.00) and not more than five hundred dollars (\$500).

(4) Any willful false swearing regarding the contents of a monthly report shall constitute perjury and shall be punishable as such.

History. Acts 1947, No. 136, § 7; 1955, No. 100, § 1; 1983, No. 254, § 6; A.S.A. 1947, § 84-2107.

CASE NOTES

ANALYSIS

In General.
Withholding of Tax.

In General.

As to presumption of validity of Acts 1955, No. 160, see *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956).

Withholding of Tax.

This section and the administrative regulations promulgated thereunder are not an attempt to collect a severance tax upon rough lumber as such, but a levy

upon the severing of timber and timber products, and supplement statutes require specified processing mills in connection with their purchases of such timber and timber products to withhold from the seller any amount of tax still owed to the state, and it does not require a purchaser of rough lumber to pay a tax thereon even though the severance tax has already been paid upon the timber from which the lumber is made. *Bradley Lumber Co. v. Cheney*, 226 Ark. 857, 295 S.W.2d 765 (1956).

Cited: *Phillips Pet. Co. v. Heath*, 254 Ark. 847, 497 S.W.2d 30 (1973).

26-58-117. Responsibility for filing monthly reports.

Notwithstanding the provisions of §§ 26-58-114 and 26-58-116, either the producer or severer of natural resources or the purchaser thereof shall report and pay severance taxes thereon as required in §§ 26-58-114 and 26-58-116. However, if either the producer or the purchaser files such report and pays the taxes during any month, the other shall be relieved of the responsibility of filing such report.

History. Acts 1977, No. 456, § 1; A.S.A. 1947, § 84-2104.1.

26-58-118. Reports — Transporters.

(a) All transporters of natural resources, save and except only pipeline transporters, whenever and as often as requested by the Director of the Department of Finance and Administration shall furnish a report under oath and upon forms prescribed by director setting forth:

- (1) The name of the shipper;
- (2) The date of shipment;
- (3) The quantity and type or character of such natural resources stated in units of measurements applicable thereto;
- (4) The point of receipt for shipment and point of destination; and
- (5) All such further information relating to the transportation of the natural resources as the director may reasonably require for the proper enforcement of the provisions of this subchapter.

(b) Any transporter failing to furnish the transporter's report as provided by this section shall be punished by fine of not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500) for each such offense.

(c) The willful false swearing in any report which may be furnished by the transporter in respect to any matter set forth in the report shall constitute perjury and shall be punishable as such.

History. Acts 1947, No. 136, § 6; A.S.A. 1947, § 84-2106.

26-58-119. Procedure upon failure to file reports or pay tax, filing inaccurate reports — Penalties — Subpoenas.

(a)(1) In the event any producer or purchaser of natural resources or any primary processor of timber fails within the time provided for in this subchapter to file the verified monthly reports required of them respectively, or in the event that the Director of the Department of Finance and Administration is not satisfied of the correctness of the reports as filed with the director, or in the event any such producer or purchaser of natural resources or any primary processor of timber fails to pay all taxes due as provided in §§ 26-58-114 and 26-58-116, it shall be the duty of the director to ascertain the true amount and value of the natural resources or timber severed and to assess the severance tax based thereon.

(2) For the purposes thereof the director is authorized to require either the producer or purchaser or both of them, or the primary processor, to furnish the director with such information, or further information, as the director may deem necessary and to require the production, at such place as the director may designate, of the books, records, and files of the producer and the purchaser or primary processor and to examine them and to take testimony of witnesses.

(3) Upon the ascertainment of the amount of the tax so found to be due, the director shall add thereto a penalty equal to fifty percent (50%) of the amount of the tax, together with all accrued costs and expenses of making such ascertainment, and shall thereupon make demand upon

both the producer and purchaser, or the primary processor in the case of timber, for the payment thereof.

(b)(1) If the producer, purchaser, or primary processor or any other such witness willfully fails to appear or to produce such books, records, and files before the director, in obedience to the director's request, the director shall certify the name of the reluctant producer, purchaser, primary processor, or other witness, with a statement of the circumstances to the circuit court of the county having jurisdiction over the person.

(2) The court shall thereupon issue a subpoena commanding the producer, purchaser, primary processor, or other witness to appear before the director, at a place designated, on a day fixed, to be continued as occasion may require, and to give such evidence, and to produce for inspection such books and papers as may be required by the director for a proper determination of the amount of taxes due.

(3) The court may hear and punish any contempt of such subpoena brought to the court's attention by the director.

History. Acts 1947, No. 136, § 8; 1983, No. 254, § 7; A.S.A. 1947, § 84-2108.

26-58-120. Arkansas Forestry Commission — Access to information — Investigations.

(a)(1) The Arkansas Forestry Commission and the authorized representatives of the commission shall have access to all tax returns and other information and records of the Director of the Department of Finance and Administration related to the reporting and payment of taxes levied upon timber by this subchapter.

(2) The commission shall furnish the director in writing the names of the forestry personnel who are authorized to have access to the timber tax records.

(3) The commission and its authorized representatives shall at all times maintain the confidentiality of such information and records.

(b) The commission is authorized to employ such persons as may be authorized by appropriation of the General Assembly to conduct inspections and investigations of primary processors of timber in order to determine whether such processors are properly reporting and paying the taxes levied in this subchapter.

(c) The inspections or investigations to be made by commission personnel shall consist of a physical inspection of the business operation of any primary processor of timber and a request for proof that the processor holds a severance tax collection permit issued under this subchapter but shall not include an in-depth or comprehensive examination of the records of the processor.

(d) If after completion of the inspection or investigation of a timber processor the commission finds that a timber processor is not collecting or remitting all taxes due under the provisions of this subchapter, the

commission shall so advise the director and shall furnish the director the information upon which such finding is based.

History. Acts 1947, No. 136, § 8; 1983, No. 254, § 7; A.S.A. 1947, § 84-2108.

26-58-121. Information provided to Arkansas Forestry Commission.

The Director of the Department of Finance and Administration is directed to release any and all information requested by the Arkansas Forestry Commission which is related to the collection of timber severance taxes. This information shall include, but not be limited to, names, addresses, and amounts paid.

History. Acts 1981, No. 730, § 13; A.S.A. 1947, § 84-2123.

26-58-122. Procedures followed upon failure to pay severance taxes due the Arkansas Forestry Commission.

(a)(1) In the event that the Arkansas Forestry Commission determines that any individual or corporation has failed to pay all severance taxes due to the commission, the commission shall certify the commission's findings to the Revenue Division of the Department of Finance and Administration.

(2) Upon receipt thereof, the Director of the Department of Finance and Administration shall immediately conduct an investigation of such matter.

(3) Within thirty (30) days of receipt of the certification, the director shall report all findings to the commission.

(b) If the director determines that all severance taxes due the commission are not being or have not been paid, the director shall immediately proceed to institute any legal action necessary to collect such tax.

(c)(1) In the event the director fails to report to the commission within the time specified or the commission disagrees with the findings of the director, the State Forester shall file with the Governor, the Legislative Council, and the House Interim Committee on Revenue and Taxation and the Senate Interim Committee on Revenue and Taxation a report of the matter.

(2) The Governor shall then conduct an investigation into such failure to report by the director or disagreement as to tax liability with the commission, take whatever measures the Governor deems necessary to rectify the situation, and shall notify the Legislative Council and the House Interim Committee on Revenue and Taxation and the Senate Interim Committee on Revenue and Taxation of the Governor's decision.

History. Acts 1981, No. 730, § 12; A.S.A. 1947, § 84-2122; Acts 1997, No. 232, § 2.

26-58-123. Lien for taxes, penalties, and costs upon natural resources and equipment.

The State of Arkansas shall have a lien for the taxes, penalties, and costs imposed by this subchapter upon any and all natural resources and timber severed from the soil or water and also upon any wells, machinery, tools, and implements used in severing such resources, and upon the tract of land from which the natural resources were severed.

History. Acts 1947, No. 136, § 10; 1983, No. 254, § 8; A.S.A. 1947, § 84-2110.

26-58-124. Distribution of severance tax generally.

(a) All taxes, penalties, and costs collected by the Director of the Department of Finance and Administration under the provisions of this subchapter shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) On or before the fifth of the month next following the month during which funds under subsection (a) of this section shall have been received by the Treasurer of State, the Treasurer of State shall allocate the funds in the following manner:

(1) Three percent (3%) of the amount of the funds to the General Revenue Fund Account of the State Apportionment Fund to be used for defraying the necessary expenses of the state government; and

(2) Ninety-seven percent (97%) of the amount of the funds, as follows:

(A)(i) All of such amount of severance taxes, penalties, and costs on timber and timber products shall be credited to the State Forestry Fund until there has been distributed to the State Forestry Fund an amount not less than the total amount of severance taxes, penalties, and costs on timber and timber products distributed to the State Forestry Fund during the fiscal year ending June 30, 1980, plus an additional amount of two million dollars (\$2,000,000) of the funds, to be used exclusively for the purpose of carrying out the functions and duties of the Arkansas Forestry Commission.

(ii)(a) The next three hundred fifty thousand dollars (\$350,000) or so much of the funds as may be collected in severance taxes, penalties, and costs on timber and timber products, over and above the amount distributed to the State Forestry Fund during each fiscal year as provided in subdivision (b)(2)(A)(i) of this section, shall be distributed and credited to the University of Arkansas at Monticello Fund.

(b) The University of Arkansas at Monticello shall transfer from General Revenue to cash funds any timber severance tax funds as

provided in this subdivision (b)(2)(A)(ii), to be set aside therein to be used solely and exclusively for providing additional support for the School of Forest Resources of the University of Arkansas at Monticello, as per the intent of this subdivision (b)(2)(A)(ii).

(iii) All of such amount of severance taxes, penalties, and costs on timber and timber products collected during each fiscal year in excess of the amounts required to be distributed for each fiscal year as provided in subdivisions (b)(2)(A)(i) and (ii) of this section shall be distributed to the State Forestry Fund to be used exclusively for the support of carrying out the functions and duties of the Arkansas Forestry Commission;

(B) Seventy-five percent (75%) of the amount of the severance taxes and penalties on diamonds shall be credited to the Arkansas State Parks Trust Fund to be used by the State Parks, Recreation, and Travel Commission for the preservation and protection of the natural resources of this state;

(C) Seventy-five percent (75%) of the amount of the severance taxes and penalties, except those on timber and timber products and except those on diamonds, shall be general revenues and shall be allocated to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(D)(i) Twenty-five percent (25%) of such amount of the severance taxes and penalties, and costs, except those on timber and timber products, shall be special revenues and shall be allocated to the County Aid Fund.

(ii) On or before the tenth of the month following the end of each calendar quarter, the Treasurer of State shall remit by state warrants to the various county treasurers all funds under subdivision (b)(2)(D)(i) of this section then received by him or her during the quarterly period and transferred to the County Aid Fund in the proportions of the funds as between the respective counties that, as certified by the director to the Treasurer of State, the total severance tax produced from each respective county bears to the total of the taxes produced from all counties.

(iii) Upon receipt of any taxes under this subdivision (b)(2)(D), each county treasurer shall credit fifty percent (50%) of the amount to the county public school fund and fifty percent (50%) of the amount to the county highway fund for use for the same purposes as other moneys credited to the respective future funds.

History. Acts 1947, No. 136, § 12; 1953, No. 42, § 9; 1955, No. 100, § 2; 1981, No. 938, § 13; A.S.A. 1947, § 84-2112; Acts 1993, No. 1156, § 2; 1999, No. 736, § 5; 2007, No. 1245, § 13.

Amendments. The 2007 amendment substituted “shall transfer” for “may transfer” in (b)(2)(A)(ii)(b).

26-58-125. Disposition of part of severance tax on salt water.

Of the fee levied per one thousand (1,000) barrels in § 26-58-111(9), forty-five cents (45¢) shall be deposited into the State Treasury as special revenues, and the Treasurer of State shall credit the amount thereof to the Oil and Gas Commission Fund.

History. Acts 1983, No. 874, § 2; A.S.A. 1947, § 84-2102a.

26-58-126. Severance tax rate for lead ore.

(a) The rate of the severance tax on lead ore shall be fifteen cents (15¢) per ton of two thousand pounds (2,000 lbs.) or at ten percent (10%) of market value, whichever rate is the greater.

(b) The severance tax rate for lead ore under this section shall be in lieu of any rate which would otherwise be applicable under § 26-58-111.

(c) The severance tax on lead ore shall be distributed in the same manner as the severance tax on other ores, as provided by § 26-58-124.

History. Acts 1993, No. 25, § 2.

SUBCHAPTER 2 — TAX CREDITS FOR CERTAIN OIL AND GAS PRODUCERS

SECTION.

- 26-58-201. Definitions.
- 26-58-202. Applicability.
- 26-58-203. Penalty.
- 26-58-204. Credit on severance tax of oil producer.
- 26-58-205. Credit on severance tax of gas producer.
- 26-58-206. Permit for credit.
- 26-58-207. Reports of tax due on oil produced.

SECTION.

- 26-58-208. Amounts of credits or tax — Maximum annual credits allowed.
- 26-58-209. Cost of maintaining salt water disposal system.
- 26-58-210. Records.
- 26-58-211. [Repealed.]

Cross References. Credit against severance tax, oil wells, § 15-72-706.

Preambles. Acts 1959, No. 57 contained a preamble which read: "Whereas, the production of oil is an important industry of this State and is vital to the continued growth of our economy; and

"Whereas, it is important to the general welfare of the people that every effort be made to conserve and recover the oil resources of this State; and

"Whereas, thousands of barrels of recoverable oil in this State are obtainable only by the production of considerable quantities of salt water; and

"Whereas, disposal of such salt water into our lakes and streams poses a pollu-

tion problem that endangers the public health and welfare; and

"Whereas, pollution of our lakes and streams may be avoided only by reinjection of salt water derived from oil production back into underground sands; and

"Whereas, such reinjection of salt water into the underground results in considerable expense which renders the production of oil uneconomical in many instances; and

"Whereas, it is in the public interest that every effort to be made to render the production of such oil economical, and

"Whereas, it is hereby declared to be the public policy of this State to encourage and promote the conservation and recov-

ery of vital oil resources in the manner provided in this Act;

"Now, therefore"

Effective Dates. Acts 1995, No. 1160, § 46; Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to main-

tain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-58-201. Definitions.

As used in this subchapter:

(1)(A) "Approved underground salt water disposal system" means a system or systems of reinjection of salt water produced as a result of oil production into an underground level or stratum, as approved by the Arkansas Pollution Control and Ecology Commission or the Arkansas Oil and Gas Commission, whereby the salt water disposed of and the method of disposing of the same shall pose no menace to a fresh water supply or to the lakes and streams of this state.

(B) "Approved underground salt water disposal system" does not include any:

(i) Reinjection system which is designed primarily for the purpose of secondary recovery and pressure maintenance; or

(ii) Pool that has been unitized for secondary recovery or pressure maintenance by order of the Arkansas Oil and Gas Commission;

(2) "Director" means the Director of the Department of Finance and Administration or any of his or her duly appointed deputies or agents;

(3) "Oil producer" means the producer of oil who is charged with the responsibility of reporting and paying the severance tax on oil as required by the laws of this state;

(4) "Person" means any individual, firm, association, partnership, limited liability company, or corporation; and

(5) "Severance tax" means the severance tax on oil produced in this state as levied by § 26-58-107.

History. Acts 1959, No. 57, § 1; A.S.A. 1947, § 84-2113; Acts 1995, No. 1160, § 39.

CASE NOTES

Cited: *Hervey v. MacFarlane Co.*, 256 Ark. 488, 510 S.W.2d 303 (1974).

26-58-202. Applicability.

(a) In no instance shall the benefits of the provisions of this subchapter apply to the severance tax due or payable on oil produced from nonsalt water producing oil wells in this state.

(b) The benefits of the provisions of this subchapter shall not apply to any underground salt water disposal system that may have been established prior to June 11, 1959, it being the intent of this subchapter that the provisions hereof shall apply only to approved underground salt water disposal systems established from and after June 11, 1959.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114.

26-58-203. Penalty.

Any person violating the provisions of this subchapter shall be guilty of a misdemeanor. A convicted offender shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or be imprisoned not less than thirty (30) days nor more than one (1) year, or be both so fined and imprisoned.

History. Acts 1959, No. 57, § 8; A.S.A. 1947, § 84-2120.

Publisher's Notes. Acts 1959, No. 57, § 8, is also codified as § 8-5-502.

26-58-204. Credit on severance tax of oil producer.

Any oil producer in this state who provides for the disposition of salt water produced in the production of oil from oil wells of such oil producer in this state by the means of an approved underground salt water disposal system shall be allowed a credit on severance taxes due and payable to the State of Arkansas on all oil so produced by such salt water producing oil wells in the amount and in the method provided in this subchapter.

History. Acts 1959, No. 57, § 2; 1959, No. 138, § 1; A.S.A. 1947, § 84-2114.

26-58-205. Credit on severance tax of gas producer.

A natural gas producer charged with the responsibility of reporting and paying the severance tax on natural gas who provides for the disposal of salt water produced in the production thereof by means of an approved underground salt water disposal system shall be allowed a credit on severance taxes due thereon in the same manner, to the same extent, and on the same conditions as the credit on severance taxes authorized in the case of oil production under this subchapter.

History. Acts 1961, No. 138, § 1; A.S.A. 1947, § 84-2121.

26-58-206. Permit for credit.

(a) Any oil producer in this state wishing to obtain the benefits of the provisions for this subchapter shall make application to the Director of the Department of Finance and Administration for a permit to obtain credit on severance taxes due on all oil produced in salt water producing oil wells of such oil producer as provided in this subchapter.

(b) The application shall list:

(1) The name and address of the oil producer;

(2) The number and location of all salt water producing oil wells of such oil producer; and

(3) A certified copy of a certificate from the Arkansas Pollution Control and Ecology Commission and the Arkansas Oil and Gas Commission certifying that all salt water produced in the production of oil in such oil wells is being disposed of in an approved underground salt water disposal system.

(c) If the director determines that the oil producer has complied with the provisions of this subchapter and the rules and regulations established by the director, the director shall issue a permit to such oil producer.

(d) The permit shall entitle the oil producer to obtain credit on severance taxes due the State of Arkansas on all oil produced in salt water producing oil wells in the amount provided in this subchapter.

History. Acts 1959, No. 57, § 3; A.S.A. 1947, § 84-2115.

26-58-207. Reports of tax due on oil produced.

(a) Each oil producer having a permit from the Director of the Department of Finance and Administration authorizing such oil producer to obtain the benefits of this subchapter upon forms prescribed by the director and under such rules and regulations as may be prescribed by the director shall report during each tax reporting period the total barrels of oil produced by oil wells producing salt water during such reporting period and shall compute the total severance tax due on such oil production.

(b) In addition, the oil producer shall report any additional or supporting information as may be required by the director during each tax reporting period as may be necessary to support the credit claimed by the oil producer.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-208. Amounts of credits or tax — Maximum annual credits allowed.

(a) The oil producer shall be entitled to a credit on the severance tax due during the reporting period in the amount of the cost, as defined in

§ 26-58-209, of the oil producer in maintaining, during such reporting period, an approved underground salt water disposal system.

(b)(1) If the cost of maintaining such approved underground salt water disposal system during the reporting period is less than the total severance tax due for the reporting period, the oil producer shall pay to the Director of the Department of Finance and Administration the amount that the total tax exceeds the cost.

(2)(A) In the event the cost of maintaining the approved underground salt water disposal system during the tax reporting period exceeds the total severance tax due during such period, the oil producer shall be given a credit for the total severance tax due for such reporting period.

(B) However, in no event shall such oil producer be permitted to credit such excess of cost over the total severance tax due for such reporting period to any oil severance tax that may have been paid, or that may become due, during any previous or subsequent tax reporting period.

(c)(1) The total severance tax credits allowed all oil producers during any calendar year by the director shall not exceed three hundred seventy thousand dollars (\$370,000).

(2) If during any calendar year the total severance tax credits of all oil producers operating approved underground salt water disposal systems exceed the total maximum allowable severance tax credits mentioned above, the director shall prorate the allowable credits among the respective oil producers in the proportion that the credits due each producer bear to the total of all severance tax credits due all oil producers.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-209. Cost of maintaining salt water disposal system.

The cost of an oil producer in maintaining an approved underground salt water disposal system for the purposes of this subchapter shall include the following:

(1) An allowance, to be spread equally over each tax reporting period, for depreciation of the actual cash investment of the oil producer in the constructing, equipping, and improving of an approved underground salt water disposal system which depreciation period shall not be less than five (5) years nor more than ten (10) years as may be approved by the Director of the Department of Finance and Administration;

(2) The actual cash outlay of the oil producer in purchasing stock in a business or corporation organized exclusively for the purpose of constructing and operating an approved underground salt water disposal system;

(3)(A) The actual expenses of the oil producer in operating and maintaining an approved underground salt water disposal system.

(B) These expenses shall include the cost of labor, supplies, materials, utilities, and other necessary operating expenses.

(C) In the case of an oil producer who purchases the services of an approved underground salt water disposal business or corporation for disposing of salt water produced in the production of oil by such oil producer, the actual cost of such service shall be deemed to be the cost of such oil producer within the meaning of this section.

History. Acts 1959, No. 57, § 6; A.S.A. 1947, § 84-2118.

26-58-210. Records.

The oil producer obtaining the benefits of the provisions of this subchapter shall maintain for a period of not less than three (3) years such records as may be required by the Director of the Department of Finance and Administration that may be necessary to justify the cost credits allowed by this subchapter.

History. Acts 1959, No. 57, § 5; 1959, No. 138, § 2; A.S.A. 1947, § 84-2117.

26-58-211. [Repealed.]

Publisher's Notes. This section, concerning fees, was repealed by Acts 1993, No. 344, § 2. The section was derived from Acts 1959, No. 57, § 7; A.S.A. 1947,

§ 84-2119. Acts 1959, No. 57, § 7, was also codified as § 8-5-505, and appears to have been impliedly repealed.

SUBCHAPTER 3 — ADDITIONAL OIL AND BRINE TAXES

SECTION.

26-58-301. Levy for benefit of Oil Museum Fund.

26-58-302. Additional levy for benefit of Oil and Brine Museum Fund.

SECTION.

26-58-303. Levy for benefit of Oil and Brine Museum Bond Redemption Fund.

Preambles. Acts 1979, No. 832 contained a preamble which read: "Whereas, museums preserve our heritage for the benefit, enjoyment, and education of the citizens of all ages and from every community in Arkansas; and

"Whereas, museums are unique cultural resources through the preservation, exhibition, and documentation of historically, scientifically, and artistically significant facts and artifacts; and

"Whereas, museums provide a unique educational tool which can directly supplement the state's educational sys-

tem through demonstrating the use and significance of said artifacts;

"Now Therefore ... "

Effective Dates. Acts 1977, No. 310, § 6: Feb. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas is a major oil producing state and was in the center of the oil boom shortly after World War I; that the oil resources of the State and the country are declining and may become a thing of the past; that there is a treasure of sites and equipment of the type used for oil and gas production in the

early oil boom days; that such equipment and sites should be preserved and properly displayed for future generations, as part of the developing history of Arkansas; and that this Act is designed to provide for preserving such equipment and sites and should be given effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 759, § 6: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the immediate transfer of the responsibilities relating to the Arkansas Oil and Brine Museum to the Arkansas State Parks, Recreation and Travel Commission is necessary for the efficient and effective operation of the Museum. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 832, § 15: Jul. 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need to establish Arkansas Museum Services and transfer the Des Arc Archeological Center, the Museum and Cultural Commission and the Arkansas Oil Museum to the Museum Services Division of the Department of Parks and Tourism so as to ensure the preservation of, the State's heritage and to assist, promote, and advance the purposes of the Museums throughout Arkansas. Therefore, an emergency is declared to exist and this Act, being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from July 1, 1979."

Acts 1980 (1st Ex. Sess.), No. 71, § 7: Feb. 12, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 310 of 1977, as amended, provides for the establishment of the Arkansas Oil and Brine Museum but that funds are not currently available for the construction of the Museum; that this Act is designed to authorize the Parks, Recreation and Travel Commission to issue bonds for the construction of the Museum, and to pledge funds derived from a fee of twenty (20) mills per barrel levied by this Act on oil produced in the State and ten (10) cents per 1,000 barrels of brine produced in this State for the purpose of bromine extraction; that it is urgent that this Act be given effect at the earliest possible date to enable the Commission to proceed with the issuance of bonds and the construction of the Museum. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 22, § 6: Nov. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly, meeting in Extraordinary Session, that sufficient funds are not currently available for the maintenance, operation, and construction of the Oil and Brine Museum. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

26-58-301. Levy for benefit of Oil Museum Fund.

(a)(1) In addition to the severance tax on oil produced in the State of Arkansas and levied in § 26-58-111(5) and (6), there is levied an additional tax of five (5) mills per barrel of oil produced in this state.

(2) All taxes, interest, and penalties collected by the Revenue Division of the Department of Finance and Administration under the provisions of this subsection shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting therefrom the three percent (3%) provided by law for credit to the Constitu-

tional Officer's Fund and the State Central Services Fund shall credit the net amount to the Oil Museum Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

(b)(1) There is levied upon all brine produced in the state for the purpose of bromine extraction a tax of twenty cents (20¢) per one thousand (1,000) barrels.

(2) The taxes levied in this subsection shall be reported and remitted monthly to the Director of the Department of Finance and Administration on such forms and in such manner as the director shall prescribe by regulations.

(3) All revenues collected by the director pursuant to the tax levied in this section shall be deposited into the State Treasury as special revenues, and the Treasurer of State after deducting therefrom the three percent (3%) provided by law for credit to the Constitutional Officer's Fund and the State Central Services Fund shall credit the net amount to the Oil Museum Fund to be used for the construction, maintenance, operation, and improvement of the Arkansas Museum of Natural Resources.

History. Acts 1977, No. 310, § 4; 1979, No. 759, § 5; 1979, No. 832, § 13; A.S.A. 1947, §§ 84-2102.1, 84-2102.2.

26-58-302. Additional levy for benefit of Oil and Brine Museum Fund.

(a)(1) There is levied a tax of two cents (2¢) per barrel of oil produced in this state.

(2) The taxes shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b)(1) There is levied a tax of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The tax shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director may prescribe.

(c)(1) Funds collected by the director under the provisions of this section shall be classified as cash fund receipts and the full amount thereof shall be deposited into one (1) or more accounts in one (1) or more banks in this state, which account or accounts shall be designated "Oil and Brine Museum Funds".

(2) All funds in such accounts shall be used exclusively for the maintenance, operation, and construction of the Arkansas Museum of Natural Resources.

(d) The taxes levied by this section shall be in addition to any and all other fees and taxes levied on oil and brine produced in this state.

History. Acts 1981 (1st Ex. Sess.), No. 22, §§ 1-4; A.S.A. 1947, §§ 84-2102.7 — 84-2102.10.

26-58-303. Levy for benefit of Oil and Brine Museum Bond Redemption Fund.

(a)(1) There is levied a fee of twenty (20) mills on each barrel of oil produced in this state.

(2) The fee shall be reported and paid monthly to the Director of the Department of Finance and Administration by each producer of oil in such manner and upon such forms as the director shall prescribe.

(b)(1) There is levied a fee of ten cents (10¢) per one thousand (1,000) barrels on all brine produced in this state for the purpose of bromine extraction.

(2) The fee shall be reported and paid monthly to the director by each producer of brine and oil in such manner and upon such forms as the director shall prescribe.

(c)(1) Funds collected by the director under the provisions of this section shall be classified as cash fund receipts and the full amount thereof shall be deposited into one (1) or more accounts in one (1) or more banks in this state, to be designated by the Department of Finance and Administration, which account or accounts shall be designated "Oil and Brine Museum Bond Redemption Fund."

(2) All funds in the fund shall be used exclusively for the payment of principal and interest on bonds issued by the Oil and Gas Commission or the Arkansas Pollution Control and Ecology Commission pursuant to the authority granted herein, and for paying agent's fees and other expenses of the issuance and sale of such bonds.

(d) The fees levied by this section shall be in addition to any and all other fees levied on oil and brine produced in this state.

History. Acts 1980 (1st Ex. Sess.), No. 71, §§ 2-5; A.S.A. 1947, §§ 84-2102.3 — 84-2102.6.

Publisher's Notes. Acts 1985, No. 1062, § 24, provided in part that the authority of the Arkansas State Parks, Recreation, and Travel Commission to issue

revenue bonds pursuant to this section was transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to this section means the Authority.

CHAPTER 59

ESTATE TAXES

SECTION.

26-59-101. Title.

26-59-102. Definitions.

26-59-103. Chapter to remain in effect while federal government imposes estate tax.

26-59-104. Federal rules of interpretation applicable.

SECTION.

26-59-105. Administration and enforcement of chapter.

26-59-106. Amount of tax imposed — Resident estates.

26-59-107. Tax imposed — Nonresident estates.

26-59-108. Exemptions.

SECTION.

- 26-59-109. Estate tax returns generally.
- 26-59-110. Estate tax returns — Contents.
- 26-59-111. Estate tax return — Extension of filing time.
- 26-59-112. Director to make return when no return filed.
- 26-59-113. Payment — Time limitations — Federal election.
- 26-59-114. Payment of tax — Discharge of executor.
- 26-59-115. [Repealed.]
- 26-59-116. Payment of tax — Reimbursement to person paying tax.

SECTION.

- 26-59-117. Payment of tax — Executor's liability.
- 26-59-118. Payment of tax — Executor's right to sell real estate.
- 26-59-119. Executor — Notice of appointment.
- 26-59-120. Duties of probate clerks — Information required.
- 26-59-121. Corporate executors of non-resident decedents — Restrictions.
- 26-59-122. Disposition and allocation of funds.

Effective Dates. Acts 1941, No. 136, § 50: Mar. 17, 1941. Emergency clause provided: "It appearing that many persons of wealth are leaving the State of Arkansas on account of the high inheritance taxes of this State and other people of wealth are refusing to move into the State of Arkansas on account of such high inheritance taxes, the Legislature hereby declares that an emergency exists and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1943, No. 19, § 2: effective on passage and approval.

Acts 1943, No. 99, § 2: effective on passage.

Acts 1943, No. 142, § 4: Mar. 4, 1943. Emergency clause provided: "There being many estates in Arkansas now pending in litigation and which litigation will extend for more than a period of one year as heretofore provided by this Act, and if such interest be collected from said estates the collection thereof will be an imposition upon the estate and over which the executor or administrator has no control. An emergency is therefore declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall become in full force and effect from and after its passage and approval."

Acts 1945, No. 156, § 5: approved Mar. 2, 1945. Emergency clause provided: "It is ascertained and found, by the General Assembly, that there are many instances

in this State where no effort has been made during a period of many years to collect inheritance taxes chiefly because the collecting authorities had no knowledge that such a tax was due, and that in such cases the property belonging to the estates involved is subject to the tax liens which constitute a cloud upon the title to such estates, seriously hamper transfers and conveyances of such property and may be costly, to innocent purchasers. Therefore, the passage of this act being necessary for the public peace, health and safety, it shall take effect and be in force from and after its passage."

Acts 1947, No. 388, § 2: Mar. 28, 1947. Emergency clause provided: "There being confusion under the provisions of existing estate tax laws as to the proper determination and computation of the exact amount of such tax due this state, it is declared to be the intention of this Act to authorize the collection of estate taxes due this state the amount of the Federal credit allowable under the Federal Estate Tax Laws, from and after the passage and approval of this Act, as to all estates of decedents dying after June 7, 1945, and to clarify such uncertainty, an emergency is hereby declared to exist, and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 284, § 3: Mar. 19, 1949. Emergency clause provided: "This Act is being passed for the purpose of correcting the collection of taxes against the estates of nonresidents which estates are now inadvertently exempt from the payment of estate taxes on intangible personal prop-

erty located in this State. Whereas such tax is collectible against residents of this State, and because of the inequality of such provisions, an emergency is declared to exist and this Act shall be in full force and effect upon and after its passage and approval."

Acts 1953, No. 188, § 3: Mar. 2, 1953. Emergency clause provided: "Since confusion and misunderstanding exists in the collection of Estate Taxes of residents and nonresidents owning property in this State and other states and there being no harmony between the imposition of taxes in such estates, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public health, peace and safety, the same shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 122, § 3: Mar. 2, 1955. Emergency clause provided: "Whereas, Act 99 of 1943 was passed prior to the amendments to the Internal Revenue Code allowing the so-called marital deduction; and whereas said Act 99 has been construed as imposing a tax burden on the surviving spouse even though the property received by such spouse is deductible for Federal Estate Tax purposes; and whereas this has had the effect of reducing the amount of the marital deduction and thereby increasing the amount of Federal Estate Tax paid by estates of Arkansas decedents; and whereas it was not the intention of said Act 99 to increase the tax burden and reduce the total value of the estates of Arkansas decedents; and whereas this situation should be promptly corrected; now, therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 25, § 3: Feb. 8, 1963. Emergency clause provided: "It is hereby found and determined by the general assembly that the laws of this state applicable to estate taxes, inheritance taxes or transfer taxes do not contain exemptions for bequests to nonprofit educational institutions; that such laws are working an undue hardship upon non-profit educational institutions of this state and are depriving such institutions of the benefits of bequests to such institutions made by residents of other states; and that clarifi-

cation of the present law is needed to correct such situation. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965, No. 169, § 3: Mar. 9, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State applicable to estate taxes, inheritance taxes or transfer taxes do not contain exemptions for bequests to non-profit religious, educational or charitable institutions, organizations or foundations; that such laws are working an undue hardship upon such institutions, organizations or foundations in this State and are depriving them of the benefits of bequests to them that might be made by residents of other states, and this act will greatly benefit deserving religious, charitable and educational institutions, organizations and foundations and thus promote the general welfare. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, it shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1989, No. 910, § 6: Mar. 23, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the estates of certain Arkansas citizens are in urgent need of being

able to elect to defer the payment of their state estate tax for the same period of time and in the same manner now provided by 26 U.S.C. § 6166, for up to a fifteen (15) year period at a four percent (4%) interest rate; that the adoption of this act is designed to alleviate the need for forced sale of family farms and closely held family businesses for the purpose of paying state estate tax; and that there should be conformity on this issue between federal and state estate tax law, which conformity does not now exist. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, and that the estates of any Arkansas citizens which are entitled to file a deferral election, pursuant to the provisions of 26 U.S.C. § 6166 of the federal tax laws, shall be entitled to have such federal election treated as a timely election to defer the payment of the proportionate part of the Arkansas state estate taxes for the same period of time."

Acts 1995, No. 270, § 19: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that various laws have been enacted since the passage of the Revenue Classification Law which have changed or created various revenues collected by the State, and that this amendment to the Revenue Classification Law is necessary in order to reflect the various taxes, licenses, fees and other revenues levied and collected for the support of and use by State Government as they currently exist and from which appropriations which become effective July 1, 1995 have been made by the Eightieth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after July 1, 1995."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

Acts 2001, No. 1681, § 5: Apr. 16, 2001 and July 1, 2001. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act transfers to the General Improvement Fund those revenues that formerly went to the Economic Development of Arkansas Fund; that those monies transferred to the General Improvement Fund have been appropriated effective July 1, 2001, and that Section 4 of this act must go into effect on July 1, 2001, in order to fund those appropriations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety, Section 4 of this act shall become effective on July 1, 2001, and the remaining sections of this act shall become effective on the date of approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 1, 2, and 3 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 1, 2, and 3 shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 42 Am. Jur. 2d, Inher. Tax, § 1 et seq.

Ark. L. Rev. Release of Powers of Ap-

pointment for Federal Estate Tax Purposes, 4 Ark. L. Rev. 66.

Federal Tax Aspects of Partnership

"Survival Insurance" Arrangements, 4 Ark. L. Rev. 187.

Comments — Relevancy of the Federal Estates Tax to Joint Tenancy and Tenancy by the Entirety, 4 Ark. L. Rev. 458.

Estate Planning with Disclaimers in Arkansas, 27 Ark. L. Rev. 411.

Haught, 1988 Update to the Arkansas Probate System: An Overview of Recent Developments in Arkansas Probate Practice, 42 Ark. L. Rev. 631.

C.J.S. 85 C.J.S., Tax., § 1111 et seq.

26-59-101. Title.

This chapter may be cited as the "Estate Tax Law of Arkansas".

History. Acts 1941, No. 136, § 1; A.S.A. 1947, § 63-101.

26-59-102. Definitions.

As used in this chapter:

(1) "Decedent" includes the testator, intestate, grantor, bargainor, vendor, or donor;

(2) "Director" means the Director of the Department of Finance and Administration;

(3) "Executor" means the executor, administrator, curator, fiduciary, or custodian of property of a decedent, or if there is no executor, administrator, curator, fiduciary, or custodian appointed, qualified, and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;

(4) "Gross estate" means the gross estate as determined under the provisions of the applicable federal revenue act;

(5) "Net estate" means the net estate as determined under the provisions of the applicable federal revenue act;

(6) "Nonresident" means an individual or natural person domiciled without the State of Arkansas;

(7) "Person" means an individual, natural person, corporation, association, partnership, limited liability company, joint-stock company, business trust, and inter vivos trust;

(8) "Resident" means an individual or natural person domiciled in the State of Arkansas as provided by statute or otherwise;

(9) "Tangible personal property" means corporeal personal property, including money; and

(10) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner described in this chapter.

History. Acts 1941, No. 136, § 2; 1945, No. 294, § 1; A.S.A. 1947, § 63-102; Acts 1995, No. 1160, § 40.

CASE NOTES

ANALYSIS

Construction.

Applicable Federal Revenue Act.

Construction.

When construing estate tax law, the court may consider administrative construction and practice. *Moses v. McLeod*, 207 Ark. 252, 180 S.W.2d 110 (1944).

Applicable Federal Revenue Act.

The provisions of the federal revenue act referred to are the federal revenue law in force when this chapter was adopted and not the provisions of federal law as subsequently amended. *McLeod v. Commercial Nat'l Bank*, 206 Ark. 1086, 178 S.W.2d 496 (1944); *State ex rel. Commis-*

sioner of Revenues v. Carney, 208 Ark. 943, 188 S.W.2d 310 (1945).

This chapter, having made the gross estate and the net estate depend on the applicable federal revenue act, life insurance up to the value of \$40,000 payable to beneficiaries was excluded from the gross estate. *State ex rel. Commissioner of Revenues v. Carney*, 208 Ark. 943, 188 S.W.2d 310 (1945).

Where the federal estate tax law allowed an exemption for property received within five years from an estate on which the estate tax had been paid, this state was required to permit the same exemption. *Cook v. Taylor*, 210 Ark. 803, 197 S.W.2d 738 (1946), questioned, *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

26-59-103. Chapter to remain in effect while federal government imposes estate tax.

This chapter shall remain in force and effect so long as the United States Government retains in full force and effect, as a part of the revenue laws of the United States, the present federal estate tax, and this chapter shall cease to be operative when the federal credit for state death taxes set forth in 26 U.S.C. § 2011 is repealed completely for the estates of decedents dying on or after January 1, 2005.

History. Acts 1941, No. 136, § 46; A.S.A. 1947, § 63-145; Acts 2003, No. 645, § 1.

Amendments. The 2003 amendment

substituted "federal credit for state death taxes January 1, 2005" for "United States Government ceases to impose any estate tax of the United States."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-104. Federal rules of interpretation applicable.

When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate tax laws of the United States shall apply to and be followed in the interpretation of this chapter.

History. Acts 1941, No. 136, § 49; A.S.A. 1947, § 63-146.

26-59-105. Administration and enforcement of chapter.

Except as otherwise provided in this chapter, the Director of the Department of Finance and Administration shall have jurisdiction and be charged with the administration and enforcement of the provisions of this chapter.

History. Acts 1941, No. 136, § 6; A.S.A. 1947, § 63-105.

26-59-106. Amount of tax imposed — Resident estates.

(a) A tax is imposed upon the transfer of real estate and personal property of every kind owned by every person who at the time of death was a resident of the State of Arkansas, the amount of which shall be a sum equal to the federal credit allowable under the federal estate tax laws, 26 U.S.C. § 2001 et seq., as in effect on January 1, 2002.

(b) Ownership of property shall include a share or certificate of indebtedness or other evidence of stock ownership in a foreign company or corporation, which share or certificate is present in this state.

(c)(1)(A) If any portion of the property of the estate is located in another state and the other state participates in the federal credit allowable, then the Arkansas tax shall be the proportional part of the credit allowable as the Arkansas property bears to the entire estate.

(B) However, if the other state shall have a reciprocal provision as to the nontaxability of property of a nonresident, then all of the federal credit allowable shall be paid to this state.

(2) However, if no federal estate tax is imposed upon the transfer of property, no Arkansas estate tax shall be imposed on the transfer of property.

History. Acts 1941, No. 136, § 3; 1945, No. 294, § 2; 1953, No. 188, § 1; 1983, No. 379, § 17; A.S.A. 1947, § 63-103; Acts 1999, No. 1126, § 40; 2003, No. 645, § 2.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return filing dates coming after, December 31, 1982.

Amendments. The 2003 amendment substituted "January 1, 2002" for "January 1, 1999" in (a).

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

CASE NOTES

ANALYSIS

Computation of Tax.
Wills and Estates.

Computation of Tax.

Where net estate exceeded \$100,000, the tax on the excess was 80% of the basic federal estate tax, which was the credit allowable under the federal law. *Moses v. McLeod*, 207 Ark. 252, 180 S.W.2d 110 (1944); *Cook v. Taylor*, 210 Ark. 803, 197 S.W.2d 738 (1946), questioned, *Cheney v.*

St. Louis S. R. Co., 239 Ark. 870, 394 S.W.2d 731 (1965) (decisions prior to 1945 amendment).

Wills and Estates.

Neither the parties or the Supreme Court were bound by a decision of the Internal Revenue Service as to the construction of a will and codicil under Arkansas law, nor did subsection (a) of this section mandate that interpretation. *Pledger v. Worthen Bank & Trust Co.*, 319 Ark. 155, 889 S.W.2d 732 (1994).

26-59-107. Tax imposed — Nonresident estates.

(a) A tax is imposed upon the transfer of all real, tangible, and intangible personal property located in the State of Arkansas of any nonresident of this state in a sum equal to the proportion of the federal credit allowable under the federal estate tax laws, 26 U.S.C. § 2001 et seq., as in effect on January 1, 2002, for estate, inheritance, legacy, and succession taxes that the Arkansas property of such a deceased person bears to the property of the entire estate, wherever located.

(b) "Arkansas property" shall be construed to include, without limiting its generality by this specification, the following items of intangible personal property:

(1) Debts including bank deposits owed to the decedent by any individual resident in this state, or by any bank or other corporation organized under the laws of this state, or by any national bank doing business in this state without regard to the physical location of any written evidence of indebtedness; and

(2) Shares of the capital stock of any corporation organized under the laws of this state without regard to the physical location of the stock certificate.

(c) However, if the decedent at the time of death was a resident of a state or territory of the United States that, at the time of his or her death, provides an exemption to a resident of this state from transfer or death taxes, then the nonresident of the other state or territory shall be exempt from the payment of the estate or inheritance tax in this state.

(d) However, if no federal estate tax is imposed upon the transfer of property, no Arkansas estate tax shall be imposed on the transfer of property.

History. Acts 1941, No. 136, § 4; 1945, No. 294, § 3; 1949, No. 284, § 1; 1983, No. 379, § 18; A.S.A. 1947, § 63-104; Acts 1999, No. 1126, § 41; 2003, No. 645, § 3.

Publisher's Notes. The 1983 amendment to this section took effect for all income years after, or estate tax return

filing dates coming after, December 31, 1982.

Amendments. The 2003 amendment, in (a), substituted "January 1, 2002" for "January 1, 1999" and inserted "a" preceding "deceased."

Effective Dates. Acts 1999, No. 1126,

§ 43: effective for tax years beginning on or after Jan. 1, 1999.

RESEARCH REFERENCES

Ark. L. Rev. Acts 1949 General Assembly — Act 284 Estate Tax on Intangibles of Nonresidents, 3 Ark. L. Rev. 396.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-108. Exemptions.

(a) There shall not be imposed any estate taxes, inheritance taxes, or transfer taxes upon the succession of title to any property from any person, association, company, or corporation, whether resident or nonresident of this state, passing to or for the use of:

(1) The State of Arkansas or to or for the use of municipal corporations or other political subdivisions thereof for exclusively public purposes;

(2) Public institutions of learning; or

(3) Any public hospital not for profit within this state.

(b) No estate taxes, inheritance taxes, or transfer taxes levied by this state shall be imposed upon any bequest made by a resident of this state to any religious, charitable, or educational institution, organization, or foundation, whether incorporated or unincorporated, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation, even though the institution, organization, or foundation is located in another state, if the law of such other state provides an equal and like exemption for bequests made by residents of that state to such institutions, organizations, or foundations located in this state.

History. Acts 1943, No. 19, § 1; 1963, No. 25, § 1; 1965, No. 169, § 1; A.S.A. 1947, § 63-151.

RESEARCH REFERENCES

Ark. L. Rev. Estate Tax Amendment, 9 Ark. L. Rev. 411.

26-59-109. Estate tax returns generally.

(a)(1) **RETURNS BY EXECUTOR.** In all cases in which the gross estate at the death of a citizen or resident of the United States exceeds one million dollars (\$1,000,000) and a portion of the property comprising the gross estate is located in Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(2) **CITIZENS OR RESIDENTS OF THE UNITED STATES.** In all cases when the gross estate at the death of a citizen or resident of the United States exceeds three million five hundred thousand dollars (\$3,500,000) and a portion of the property composing the gross estate is located in

Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(3) **NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.** In the case of the estate of every nonresident not a citizen of the United States, if that part of the gross estate that is situated in the United States exceeds three million five hundred thousand dollars (\$3,500,000) and a portion of the property composing the gross estate is located in Arkansas, then the executor shall make a return with respect to the estate tax imposed by this chapter.

(4) **PHASE-IN OF FILING REQUIREMENT AMOUNT.**

In the case of decedents dying in:	Subdivisions (a)(2) and (a)(3) shall be applied by substituting for "\$3,500,000" the following amount:
2002 and 2003	\$1,000,000
2004	1,500,000
2005	1,500,000
2006, 2007, and 2008	2,000,000
2009 and thereafter	3,500,000

(b) **RETURNS BY BENEFICIARIES.** If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Director of the Department of Finance and Administration, such person shall in like manner make a return as to such part of the gross estate.

(c) **RETURNS DUE.** Returns made under subsection (a) of this section shall be filed within nine (9) months after the date of the decedent's death.

(d) **PLACE OF FILING.** Estate tax returns shall be filed with the director at his or her office in Little Rock, Arkansas.

History. Acts 1941, No. 136, § 21; 1947, No. 388, § 1; 1983, No. 379, § 19; A.S.A. 1947, § 63-120; Acts 1999, No. 1126, § 10; 2003, No. 645, § 4.

Publisher's Notes. Acts 1983, No. 379, § 19, purported to amend "Section 1 of Act 388 of 1947 and Section 21 of Act 136 of 1941, as amended, the same having been Arkansas Statute 63-120." Acts 1941, No. 136, § 21, was formerly compiled as A.S.A. 1947, § 63-120; Acts 1947, No. 388, § 1, repealed Acts 1941, No. 136, § 21, as to estates of decedents dying after March 28, 1947. The general rule of statutory construction is that a repealed statute cannot be amended. However, in order to give effect to the apparent intent of the legislature pending either a subsequent legislative action or a judicial construction of this provision, Acts 1983, No. 379, § 19, has been codified in this section as an amendment to the 1941 and 1947 provisions, carrying references to all three acts in the historical citation of the section.

Amendments. The 2003 amendment, in (a)(1) and (a)(2), substituted "three million five hundred thousand dollars (\$3,500,000)" for "one million dollars (\$1,000,000)" and "composing" for "comprising"; in (a)(3), substituted "Subdivisions (a)(1) and (a)(2)" for "Subdivision (a)(1)," "\$3,500,000" for "\$1,000,000," deleted information for 1999 through 2001 in the table, substituted "1,000,000" for

"700,000" for 2002 and 2003, "1,500,000" for "850,000" for 2004, "1,500,000" for "950,000" for 2005, "2,000,000" for "1,000,000" for 2006, substituted "2007, and 2008" for "or thereafter" and added "2009 and thereafter ... 3,500,000."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-110. Estate tax returns — Contents.

The executor at such times and in such manner as may be required by regulations made pursuant to law shall also file with the Director of the Department of Finance and Administration a return under oath, setting forth:

(1) A description and the value of the gross estate of the decedent at the time of the decedent's death, as defined in the applicable federal revenue act, or in case of the estate of a decedent who at the time of death was not domiciled in the United States, of that part of the decedent's gross estate situated in the United States;

(2) The deductions allowable under this chapter;

(3) The value of the net estate of the decedent as defined in this chapter;

(4) A description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of the decedent's death was a resident of the State of Arkansas as shall be located or situate, at the time of the decedent's death, without the State of Arkansas;

(5) A description and the value of such part of the real property and tangible personal property of the gross estate of a decedent who at the time of the decedent's death was a nonresident of the State of Arkansas but a resident of the United States as shall be located or situate, at the time of the decedent's death, within the State of Arkansas;

(6) A description and the value of real property situate and personal property having an actual situs in this state and intangible personal property physically present within this state of the estate of a decedent who at the time of the decedent's death was not a resident of the United States; and

(7) The tax paid or payable thereon and the manner of computing the tax, or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to determine and establish the correct tax.

History. Acts 1941, No. 136, § 20; A.S.A. 1947, § 63-119.

26-59-111. Estate tax return — Extension of filing time.

(a) Any person who requests and receives an extension of time in which to file a federal estate tax return, as provided by 26 U.S.C. § 6081, as amended and in effect on January 1, 2002, shall be granted an extension of time in which to file the Arkansas estate tax return for the same period of time as granted for the filing of the federal estate tax return.

(b) This request for extension of time in which to file shall be granted by the timely filing of a copy of the federal application form with the Director of the Department of Finance and Administration and then attaching to the Arkansas estate tax return, when actually filed with the director, a copy of the document granting such federal extension.

(c) The director shall assess interest at the rate of ten percent (10%) per annum on the amount of estate tax finally determined to be due from the date the estate tax return was originally due to be filed.

History. Acts 1941, No. 136, § 22; 1979, No. 401, § 48; 1983, No. 379, § 20; A.S.A. 1947, § 63-121; Acts 1999, No. 1126, § 42; 2003, No. 645, § 5.

Publisher's Notes. Acts 1983, No. 379, § 20, purported to amend "Section 22 of Act 136 of 1941, as amended, by a repealing clause of Subsection (a) of Section 48 of Act 401 of 1979." Acts 1941, No. 136, § 22, was formerly compiled as A.S.A. 1947, § 63-121, but was repealed by Acts 1979, No. 401, § 48, effective January 1, 1980. The general rule of statutory construction is that a repealed statute cannot be amended. However, in order to give effect to the apparent intent of the legis-

lature pending either a subsequent legislative action or a judicial construction of this provision, Acts 1983, No. 379, § 20, has been codified in this section as an amendment to the 1941 and 1979 provisions, carrying references to all three acts in the historical citation of the section.

Amendments. The 2003 amendment substituted "January 1, 2002" for "January 1, 1999" in (a).

Cross References. Extension of time for filing return generally, § 26-18-505.

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-112. Director to make return when no return filed.

If any executor, administrator, fiduciary, trustee, person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the Director of the Department of Finance and Administration shall make the return or list from the director's own knowledge and from such information as the director can obtain through testimony or otherwise. Any return or list so made by the director shall be prima facie good and sufficient for all legal purposes.

History. Acts 1941, No. 136, § 23; A.S.A. 1947, § 63-122.

26-59-113. Payment — Time limitations — Federal election.

(a) The tax imposed by this chapter shall be due and payable nine (9) months after a decedent's death and shall be paid by the executor to the Director of the Department of Finance and Administration.

(b)(1)(A) When the director finds that the payment on the due date of the tax or any part of the tax would impose undue hardship upon the estate, the director may extend the time for any payment of any such part.

(B) However, no extension shall be for more than eighteen (18) months, and the aggregate of the extension with respect to any estate shall not exceed five (5) years from the due date, except as provided in subsection (c) of this section.

(2) In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension unless further extension is granted.

(c)(1) The provisions of 26 U.S.C. § 6166, as amended and in effect on January 1, 2002, which provide for an election by the representative of a decedent's estate to pay the federal estate tax due on certain qualifying assets of the estate in deferred installments for a period of up to fifteen (15) years at a two percent (2%) interest rate regarding either the estate original shown due on the estate tax return or as later determined to be due following audit shall be adopted as a state estate tax law.

(2)(A) However, the two percent (2%) interest rate shall only apply to the "2-percent portion" as that term is defined in 26 U.S.C. § 6601(j)(2), as amended and in effect on January 1, 2002.

(B) The interest rate on the estate tax exceeding the "2-percent portion" shall be at the rate specified in § 26-18-508 concerning tax deficiencies.

(3) Any timely filed election by the representative of the decedent's estate for deferral of the payment of federal estate taxes shall be deemed to also defer the payment of the applicable portion of Arkansas estate tax for the same periods of time for the Arkansas assets qualifying for this special federal election.

History. Acts 1941, No. 136, §§ 24, 25; 1943, No. 142, §§ 1, 2; 1975, No. 472, § 1; A.S.A. 1947, §§ 63-123, 63-124; Acts 1989, No. 910, § 2; 1999, No. 1126, § 11; 2003, No. 645, § 6.

A.C.R.C. Notes. Acts 1989, No. 910, § 1, provided: "It is hereby found and determined that it has been the policy of the General Assembly to attempt to conform federal and Arkansas tax laws, as much as possible, so as to eliminate confusion and complexity in the administra-

tion of Arkansas state tax laws, and to provide Arkansas citizens with the same treatment for state taxes as they receive for federal taxes. Federal tax law now provides a special installment deferral for the payment of federal estate taxes for certain qualifying assets (generally family farms and closely held businesses) of a decedent's estate that are inherited by the members of the decedent's family. This special installment deferral provision, of up to fifteen (15) years at a four percent

(4%) interest rate, has been enacted by Congress to encourage the continued ownership of family farms and closely held family businesses, rather than forcing the sale or heavy mortgaging of the assets of such businesses to immediately pay estate taxes. Arkansas estate tax law does not now contain similar provisions. Arkansas law now requires a much quicker payment of Arkansas estate taxes on assets of a decedent's estate comprising family farms and closely held family businesses. The General Assembly finds and determines

that the estates of Arkansas decedents that are entitled to claim the special deferral payment of federal estate taxes, at a four percent (4%) interest rate, should also be entitled to those same privileges for the payment of Arkansas Estate Tax."

Amendments. The 2003 amendment, in (c)(1) and (c)(2), substituted "January 1, 2002" for "January 1, 1999."

Effective Dates. Acts 1999, No. 1126, § 43: effective for tax years beginning on or after Jan. 1, 1999.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Estate Tax, 26 U. Ark. Little Rock L. Rev. 495.

26-59-114. Payment of tax — Discharge of executor.

(a) The Director of the Department of Finance and Administration shall issue to the executor upon payment of the tax imposed by this chapter receipts in triplicate any of which shall be sufficient evidence of the payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle the executor's accounts.

(b) If the executor files a complete return and makes written application to the director for determination of the amount of the tax and discharge from personal liability, the director as soon as possible, and in any event within one (1) year after receipt of such application, shall notify the executor of the amount of the tax and, upon payment thereof, the executor shall be discharged from personal liability for any additional tax thereafter found to be due and shall be entitled to receive from the director a receipt in writing showing such discharge.

(c) The discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof. However, after the discharge is given no part of the gross estate shall be subject to the lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

History. Acts 1941, No. 136, § 30; A.S.A. 1947, § 63-129.

26-59-115. [Repealed.]

Publisher's Notes. This section, concerning payment of tax spread proportionately among distributees and beneficiaries, was repealed by Acts 2007, No. 276,

§ 2. The section was derived from Acts 1943, No. 99, § 1; 1955, No. 122, § 1; A.S.A. 1947, § 63-150.

26-59-116. Payment of tax — Reimbursement to person paying tax.

(a) If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his or her capacity as such, the person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate.

(b) It is the purpose and intent of this section that insofar as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution. However, the Director of the Department of Finance and Administration shall not be charged with enforcing contribution from any person.

History. Acts 1941, No. 136, § 32;
A.S.A. 1947, § 63-131.

26-59-117. Payment of tax — Executor's liability.

If any executor makes distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having paid or secured the tax due the State of Arkansas under this chapter or obtained the release of the property from the lien of such tax, the executor shall become personally liable for the tax so due the state, or so much of the tax as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into the executor's hands, custody, or control.

History. Acts 1941, No. 136, § 34;
A.S.A. 1947, § 63-133.

26-59-118. Payment of tax — Executor's right to sell real estate.

Every executor shall have the same right and power to take possession of or sell, convey, and dispose of real estate as assets of the estate for payment of the tax imposed by this chapter as the executor may have for the payment of the debts of the decedent.

History. Acts 1941, No. 136, § 35; erty for payment of debts, § 28-51-301 et
A.S.A. 1947, § 63-134. seq.

Cross References. Sale of real prop-

26-59-119. Executor — Notice of appointment.

The executor within two (2) months after the decedent's death or within a like period after qualifying as executor, shall give written

notice of his or her qualification as executor to the Director of the Department of Finance and Administration.

History. Acts 1941, No. 136, § 20; A.S.A. 1947, § 63-119.

26-59-120. Duties of probate clerks — Information required.

(a) When letters of administration or letters testamentary are issued by any probate clerk of a county of the State of Arkansas, the probate clerk shall immediately advise the Revenue Division of the Department of Finance and Administration that such letters were granted, giving the name of the executor or administrator and an estimate of the value of the estate of the deceased person so far as the probate clerk is able to ascertain from information obtained, and the number of heirs of the deceased person.

(b) The probate clerk of the county shall also furnish the division a certified copy of the appraisement of the real and personal property of each estate when the appraisement of the property of each of the estates is filed with the probate clerk.

History. Acts 1945, No. 156, § 3; A.S.A. 1947, § 63-149.

26-59-121. Corporate executors of nonresident decedents — Restrictions.

(a) If the executor of the estate of a nonresident is a corporation authorized, qualified, and acting as executor in the jurisdiction of the domicile of the decedent, it shall be under the same duties and obligations as to the giving of notices and filing of returns required by this chapter and may bring and defend actions and suits as may be authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that the corporation may be prohibited from exercising in this state any powers as executor.

(b) Nothing contained in this section shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as executor, administrator, or in any other fiduciary capacity if otherwise prohibited by the laws of this state except to the extent herein expressly provided.

History. Acts 1941, No. 136, § 40; A.S.A. 1947, § 63-139.

26-59-122. Disposition and allocation of funds.

(a) All taxes, fees, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund, except that the amount of estate taxes collected in a calendar year that exceeds ten

percent (10%) of the average annual estate taxes collected for a five-year period immediately preceding the calendar year or fifteen million dollars (\$15,000,000), whichever is greater, shall be deposited into the State Treasury as special revenues and credited to the General Improvement Fund.

(b) The Treasurer of State shall allocate and transfer the funds to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by^a and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1941, No. 136, § 45 as § 1; 1995, No. 270, § 8; 1999, No. 1568, added by Acts 1953, No. 118, § 32(J); § 1; 2001, No. 1681, § 4. A.S.A. 1947, § 63-144; Acts 1993, No. 590,

CASE NOTES

Allocation of Funds.

In a misappropriation of “public funds” case, where taxpayer challenged the constitutionality of two appropriation bills, Acts 1997, Nos. 413 and 672, and alleged that all appropriations made under the bills constituted illegal exactions in violation of Ark. Const. Art. V, § 29, the trial court did not err in applying the defense of good faith because the Acts were presumed valid and penalties should not be imposed on state officials or citizens for

doing likewise; further, in the five-year span between the filing of the lawsuit and the trial court’s order, the Economic Development of Arkansas Fund Commission had been abolished and all monies appropriated through the Commission were spent, thus, neither injunctive relief nor restitution were proper remedies and the taxpayer’s claims were moot. *White v. Ark. Capital Corporation/Diamond State Ventures*, 365 Ark. 200, 226 S.W.3d 825 (2006).

CHAPTER 60

REAL PROPERTY TRANSFER TAX

SECTION.

- 26-60-101. Definition.
- 26-60-102. Transfers to which chapter in-applicable.
- 26-60-103. Enforcement and regulations by Director of the Department of Finance and Administration.
- 26-60-104. Rules and regulations.
- 26-60-105. Tax on transfer instruments — Additional tax.
- 26-60-106. Payment of tax.
- 26-60-107. Real Property Transfer Tax

SECTION.

- Affidavit of Compliance Form.
- 26-60-108. Real Property Transfer Tax Affidavit of Compliance and Receipt — Completion, storage, audit, etc.
- 26-60-109. Documentary stamps.
- 26-60-110. Recordation of deed.
- 26-60-111. Filing deed in violation — False information — Penalties.
- 26-60-112. Disposition of funds collected.

Effective Dates. Acts 1971, No. 275, § 12: Mar. 15, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act

239 of 1969 provided revenues for the State Parks, Recreation and Travel Commission and the Arkansas Children’s Colony Board; that a decision of the Ar-

kansas Supreme Court has delayed these agencies in utilizing said funds; that there is immediate need for these funds particularly in the construction, repair and improvements of the public parks system and the Arkansas Children's Colonies; and that only by the immediate passage of this Act may said funds be immediately available to be appropriated by the Sixty-Eighth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 398, § 3: Mar. 26, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 275 of 1971, the Real Estate Transfer Tax Act, provides for the sale of documentary stamps to evidence the payment of the tax by the County Recorder rather than by the local offices of the State Revenue Department; that this additional duty placed upon the Recorder will increase the work load of the Recorder's office significantly and places a severe hardship on the various County Recorders throughout the State and should be revised immediately so as to provide for the sale of documentary stamps by the various local offices of the State Revenue Department. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 992, § 3: Apr. 11, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present law levying the real estate transfer tax has been interpreted to include timber deeds which convey or grant the right to sever and remove timber from lands; that the application of the real estate transfer tax to such timber deeds create an unusual and unreasonable tax burden on timber land owners in this State and that it is in the best interest of the continued growth and development of the wood products industry in the State that timber deeds conveying the right to remove timber from lands for periods of not more than eighteen (18) months be exempt from the real estate transfer tax, that this Act is designed to accomplish

this purpose and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 287, § 3: Mar. 3, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present law levying a real estate transfer tax has been the subject of conflicting interpretations as to whether the tax includes deeds, instruments or other writings by which any lands, tenements, or other realty sold or otherwise transferred from the United States, the State of Arkansas or any of the instrumentalities, agencies or political subdivisions thereof; that the confusion which has existed with respect to such conflicting interpretations is not in the public interest as it has impaired the ability of the State of Arkansas and its instrumentalities, agencies, and political subdivisions to transfer ownership of lands, tenements and other realty; and that this Act is designed to resolve such confusion and should be given effect at the earliest possible date. Therefore, an emergency is declared to exist and the Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 754, § 9: July 1, 1983.

Acts 1985, No. 926, § 7: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Real Property Transfer law has been interpreted by many in a manner inconsistent with the intent of the General Assembly thereby unduly burdening Arkansas taxpayers and landowners both financially and in time consuming paperwork therefore an emergency is declared to exist and, this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its date of passage and approval."

Acts 1993, No. 1181, § 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, re-

sponsibilities, and functions of the Arkansas Natural and Cultural Resources Council. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 270, § 19: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that various laws have been enacted since the passage of the Revenue Classification Law which have changed or created various revenues collected by the State, and that this amendment to the Revenue Classification Law is necessary in order to reflect the various taxes, licenses, fees and other revenues levied and collected for the support of and use by State Government as they currently exist and from which appropriations which become effective July 1, 1995 have been made by the Eightieth General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 385, § 9: Mar. 6, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the original ten subject matter joint interim committees of the General Assembly and in their place established House interim committees and Senate interim committees; that as a result, various sections of the Arkansas Code that refer to the joint interim committees should now refer to the House and Senate interim committees; that this act so provides; and that this act should go into effect as soon as possible in order to make those sections of the Arkansas Code compatible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If

the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 788, § 36: became law without the Governor's signature. Noted Mar. 11, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1341, § 35: became law without the Governor's signature. Noted Apr. 11, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 361, § 8: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the authorized transfer from the real estate transfer tax to support county and circuit clerks continuing education is insufficient and when the amount of transfer is increased, the appropriation level must also be adjusted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

26-60-101. Definition.

As used in this chapter, "consideration" means the amount of full actual consideration paid or to be paid for the property conveyed, including the amount of any purchase-money encumbrance executed by the purchaser.

History. Acts 1971, No. 275, § 9; A.S.A. 1947, § 84-4308.

26-60-102. Transfers to which chapter inapplicable.

The real property transfer tax imposed by this chapter shall not apply to a transfer of the following:

(1) A transfer to or from the United States, the State of Arkansas, or any of the instrumentalities, agencies, or political subdivisions of the United States or the State of Arkansas;

(2) Any instrument or writing given solely to secure a debt;

(3) Any instrument solely for the purpose of correcting or replacing an instrument that has been previously recorded with full payment of the tax having been paid at the time of the previous recordation;

(4) An instrument conveying land sold for delinquent taxes;

(5) An instrument conveying a leasehold interest in land only;

(6) An instrument, including a timber deed, that conveys or grants the right to remove timber from land if the instrument grants or conveys the right to remove the timber for a period of not to exceed twenty-four (24) months;

(7) An instrument given by one (1) party in a divorce action to the other party to the divorce action as a division of marital property whether by agreement or order of the court;

(8) An instrument given in any judicial proceeding to enforce any security interest in real estate when the instrument transfers the property to the same person who is seeking to enforce the security interest;

(9) An instrument given to a secured party in lieu of or to avoid a judicial proceeding to enforce a security interest in real estate;

(10) An instrument conveying a home financed by the Federal Housing Administration, the United States Department of Veterans Affairs, or the United States Department of Agriculture Rural Development, if the sale price of the home is sixty thousand dollars (\$60,000) or less and the seller files with the county recorder of deeds a sworn statement by the buyer stating that neither the buyer nor the spouse of the buyer has owned a home within three (3) years of the date of closing and also stating the sale price of the home;

(11) An instrument conveying land between corporations, partnerships, limited liability companies, or other business entities or between a business entity and its shareholder, partner, or member incident to the organization, reorganization, merger, consolidation, capitalization, asset distribution, or liquidation of a corporation, partnership, limited liability company, or other business entity; and

(12) A beneficiary deed under § 18-12-608.

History. Acts 1971, No. 275, § 2; 1975, No. 992, § 1; 1981, No. 287, § 1; 1983, No. 413, § 1; 1983, No. 754, § 1; 1985, No. 926, § 1; 1985, No. 1063, § 4; 1985, No. 1081, § 4; A.S.A. 1947, § 84-4302; Acts 1987, No. 642, § 1; 1993, No. 1046, § 1; 1997, No. 833, § 1; 2003, No. 1086, § 1; 2007, No. 243, § 3.

Amendments. The 2003 amendment, in (11), inserted “partnerships ... business entities,” substituted “business entity” for “corporation,” inserted “partners, or members,” “capitalization, asset distribution” and “partnership ... other business entity.”

The 2007 amendment added (12).

26-60-103. Enforcement and regulations by Director of the Department of Finance and Administration.

The enforcement of the provisions of this chapter shall be the responsibility of the Director of the Department of Finance and Administration under regulations to be promulgated by the director.

History. Acts 1971, No. 275, § 8; A.S.A. 1947, § 84-4307.

26-60-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized to promulgate rules and regulations to carry out the purposes of this chapter which shall be submitted to the:

(1) House Interim Committee on City, County, and Local Affairs and the Senate Interim Committee on City, County, and Local Affairs; or

(2) House Committee on City, County, and Local Affairs and the Senate Committee on City, County, and Local Affairs.

History. Acts 1983, No. 754, § 7; A.S.A. 1947, § 84-4309; Acts 1997, No. 385, § 4.

26-60-105. Tax on transfer instruments — Additional tax.

(a) There is levied on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or any other person by the purchaser's direction, when the consideration for the interest or property conveyed exceeds one hundred dollars (\$100), a tax at the rate of one dollar and ten cents (\$1.10) for each one thousand dollars (\$1,000) or fractional part thereof.

(b) In addition to the tax levied in subsection (a) of this section on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons by his or her or their direction when the consideration for the interest or property conveyed exceeds one hundred dollars (\$100), as levied under the provisions of this chapter, there is levied an additional tax of two dollars and twenty cents (\$2.20) for each one thousand dollars (\$1,000), or fractional part thereof, to be paid by the

purchaser and to be allocated and used for the purposes as provided in § 15-12-103.

History. Acts 1971, No. 275, § 1; A.S.A. 1947, § 84-4301; Acts 1987, No. 729, § 4; 1993, No. 1181, § 1.

A.C.R.C. Notes. Acts 2007, No. 793, § 38, provided: "SPECIAL FUNDING PROVISION - REAL ESTATE TRANSFER TAX. For the biennium ending June 30, 2009, revenues derived from the tax levied by Arkansas Code § 26-60-105(b) shall be credited by the Treasurer of State each fiscal year of the biennium in the order and percentage and amounts as follows:

"(1) Three percent (3%) for distribution to the Constitutional Officers Fund and the State Central Services Fund;

"(2) Of the eighty percent (80%) of the net amount to be credited to the Arkansas Natural and Cultural Resources Grants and Trust Fund, the first four million five hundred thousand dollars (\$4,500,000) shall be distributed to the General Revenue Fund Account of the State Apportionment Fund; and

"(3) The remainder as provided in Arkansas Code § 15-12-103(b)(1) — (3)."

26-60-106. Payment of tax.

The tax levied by this chapter:

- (1) Applies at the time of transfer;
- (2) Shall be computed on the basis of the full consideration for the real estate transferred; and
- (3) Unless agreed upon otherwise, shall be paid one-half (½) by the grantor or seller and one-half (½) by the grantee or purchaser.

History. Acts 1971, No. 275, § 3; 1983, 1081, § 1; 1985, No. 1063, § 1; A.S.A. No. 754, § 2; 1985, No. 926, § 2; 1985, No. 1947, § 84-4303; Acts 1995, No. 383, § 1.

26-60-107. Real Property Transfer Tax Affidavit of Compliance Form.

(a)(1) The Director of the Department of Finance and Administration shall design a "Real Property Transfer Tax Affidavit of Compliance" form which shall be in triplicate.

(2)(A) The form shall contain essentially the information prescribed in this section.

- (B) The affidavit portion shall provide space for:
 - (i) The name and address of the grantor or seller;
 - (ii) The name and address of the grantee or buyer;
 - (iii) The date of the real property transfer as reflected on the transfer instrument;
 - (iv) The name of the county where the property is located;
 - (v) The amount of the full consideration for the transaction or a statement giving the reason the real property transfer tax does not apply to the transaction unless it is clearly evident from the contents of the document to be recorded without reference to any other writing or extrinsic evidence that the instrument is exempt from the real property transfer tax under one (1) of the provisions in § 26-60-102, in which case the county recorder may record the instrument without such an affidavit. In any case when the county recorder doubts the entitlement to the exemption, the county recorder shall require the

affidavit or a certification, setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument; and

(vi) The value of the documentary stamps attached to the face of the instrument.

(b)(1) If the real property transfer instrument is for a transfer upon which no tax is due but is not clearly exempt under § 26-60-102, the same affidavit shall provide for stating this fact and shall be signed by the grantee or his or her agent, whose address shall be included in a space provided on the affidavit and be presented with the transfer instrument to the county recorder.

(2) The director shall furnish a supply of the "Real Property Transfer Tax Affidavit of Compliance" forms to each revenue office in each county of this state and may make these forms available to the county recorder or any other interested persons in each county upon request to the director.

(3)(A) The grantee or his or her agent shall complete the affidavit, including a statement of the full consideration for such transaction and the amount of tax to be reflected by documentary stamps on the face of the instrument.

(B) The grantee or his or her agent shall attach the proper number of documentary stamps to the face of the instrument in such manner that all such stamps will be fully visible in the records of the county recorder where the county recorder maintains records by reproducing the document by photographic, photocopy, or other reproductive method.

(c)(1) When it is clearly evident from the contents of the instrument without reference to any other writing or extrinsic evidence that the instrument is exempt from the real property transfer tax under one (1) of the provisions in § 26-60-102, the county recorder may record the instrument without requiring the certification allowed as an alternative to the affidavit.

(2) If the county recorder doubts the entitlement to the exemption, the county recorder shall require a certification or affidavit setting out the reasons for the exemption in full to be submitted with the instrument prior to recording the instrument.

(d)(1)(A) On receipt and recordation of the instrument, the county recorder will retain two (2) copies of the affidavit.

(B)(i) One (1) copy will be held for the director who will pick up the copies at reasonable intervals.

(ii) The second copy will be held for the county assessor who will pick up the copies at reasonable intervals.

(iii) The third copy shall be returned to the party filing the instrument for record.

(2)(A) The affidavits in the files of the director will be public records governed by the same rules and regulations as are applied to the disclosure of motor vehicle titling and registration information.

(B) The copies of the affidavit in the hands of the county assessor shall be public records subject to the same laws regarding disclosure as all other taxpayer records of the county assessor.

(e)(1) Upon receipt of the instrument, the county recorder shall cancel the documentary stamps or shall note that the instrument is exempt or that no tax is due on the face of the instrument.

(2) The county recorder shall place on the face of the affidavit a file stamp and the book and page or instrument number of the recorded instrument.

History. Acts 1971, No. 275, § 5; 1983, 1063, § 3; 1985, No. 1081, § 3; A.S.A. No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1947, § 84-4305.

26-60-108. Real Property Transfer Tax Affidavit of Compliance and Receipt — Completion, storage, audit, etc.

(a) The Director of the Department of Finance and Administration or his or her agent before accepting payment of the real property transfer tax shall require that the affidavit portion of the Real Property Transfer Tax Affidavit of Compliance form and receipt be completed, including the statement of the full amount of the consideration for the transaction and the amount of tax to be reflected on the receipt portion thereof in evidence that such information was furnished by the person signing the affidavit before the director shall receive payment of the tax, and sign the receipt. The director shall attach the stamps to the face of the instrument.

(b)(1) The original copy of the affidavit and receipt shall be retained by the director or his or her agent and shall be treated as a confidential tax record in the same manner as required by law for confidentiality of state income tax returns.

(2) The information shall be released to duly elected county assessors and become a public document.

(c)(1) The clerk's copy of the affidavit and receipt shall be delivered to the person paying the tax and the receipt portion may be detached and retained by the taxpayer.

(2) The clerk's copy of the affidavit shall be presented to the county recorder of deeds, who shall review and determine that the same is in compliance with this chapter before the instrument of real property transfer may be accepted for recordation and record the receipt number evidencing payment of the tax on the real property transfer instrument.

(3) In the case of instruments exempt from the tax, the county recorder shall record a notation to this effect on the transfer instruments.

(4) The county recorder shall place on the face of the affidavit a file stamp and the book and page numbers or instrument number.

(d)(1) The copies of the affidavit stamped as required above and as required in § 26-60-107(b)(3)(A) shall be placed by the county recorder in a box or file kept for such purpose.

(2) At least weekly, the Revenue Division of the Department of Finance and Administration shall pick up the affidavits and shall

attach those upon which tax is paid to the original copy thereof retained in the Revenue Division of the Department of Finance and Administration's files.

(e) Copies of the affidavits shall be kept for audit for compliance with this chapter and for audit by the Division of Legislative Audit.

(f) The triplicate copy shall be made available to the county assessor.

History. Acts 1971, No. 275, § 5; 1983, 1063, § 3; 1985, No. 1081, § 3; A.S.A. No. 754, § 4; 1985, No. 926, § 4; 1985, No. 1947, § 84-4305n.

26-60-109. Documentary stamps.

The Director of the Department of Finance and Administration shall design documentary stamps in appropriate denominations and shall make the stamps available for purchase at offices of the Revenue Division of the Department of Finance and Administration and by consignment arrangement with title companies, banks, and savings and loans associations throughout the state.

History. Acts 1971, No. 275, § 5; 1971, No. 398, § 1; 1985, No. 926, § 4; 1985, No. 1063, §§ 1, 3; 1985, No. 1081, § 3; A.S.A. 1947, § 84-4305; Acts 1989, No. 513, § 1; 2005, No. 260, § 1.

Amendments. The 2005 amendment substituted "title companies, banks, and" for "banks and."

26-60-110. Recordation of deed.

(a) It shall be the duty of the grantee or buyer or his or her agent to furnish proof of payment of tax as provided in this chapter before the real estate transfer instrument may be accepted by the county recorder of deeds for recordation.

(b) The county recorder of deeds shall not record any instrument evidencing a transfer of title subject to this chapter unless:

(1) The instrument at the time it is presented for recording shall have attached thereto or be accompanied by an affidavit in the form provided in this chapter, containing the information required in this chapter, and have documentary stamps attached to the face of the instrument evidencing full payment of the real property transfer tax on the transaction. The instrument shall contain a notation on its face which shall be recorded as part of the instrument that the affidavit was completed; or

(2)(A) In the alternative, the instrument has stamped thereon or attached thereto in a manner which will cause it to be recorded as a part of the instrument the following statement:

"I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument".

(B) This statement shall be signed by the grantee or his or her agent, and the grantee's address shall be clearly shown on the instrument.

(c) The county recorder of deeds shall not record any instrument whereon documentary stamps are attached in such manner that the amount printed on each stamp is not visible.

History. Acts 1971, No. 275, §§ 3, 4; 1081, §§ 1, 2; A.S.A. 1947, §§ 84-4303, 1983, No. 754, §§ 2, 3; 1985, No. 926, 84-4304; Acts 1995, No. 1299, §§ 1, 2, §§ 2, 3; 1985, No. 1063, §§ 1, 2; 1985, No.

26-60-111. Filing deed in violation — False information — Penalties.

(a)(1) Any person filing a deed for record who knowingly, willfully, and fraudulently files the deed in violation of this chapter upon conviction thereof in addition to other penalties provided by law shall be subject to a fine of five hundred dollars (\$500) or one percent (1%) of the amount of the transaction, whichever is greater.

(2) In addition to such fine and penalties, the affidavit and certification provided for by this chapter is declared to be a return within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the purchase of stamps is the payment of the tax due on the return, and the person required to furnish proof of payment shall be a taxpayer within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) Any person guilty of providing false information on the affidavit or making a false certification or who shall fail to disclose the full amount of the consideration of the transaction on the affidavit and pay the tax due thereon or who makes a false certification and fails to pay the correct amount of tax due as required by this chapter, shall be subject to the penalties provided for in §§ 26-18-201 — 26-18-204.

History. Acts 1971, No. 275, § 8; 1983, 1063, § 5; 1985, No. 1081, § 5; A.S.A. No. 754, § 6; 1985, No. 926, § 5; 1985, No. 1947, § 84-4307.

26-60-112. Disposition of funds collected.

(a) The revenues from the additional tax levied by § 26-60-105(b) shall be deemed special revenues and shall be deposited and distributed according to § 15-12-103.

(b) The revenues derived from the tax levied by § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration into the State Treasury, and the Treasurer of State after deducting three percent (3%) of the revenues for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law shall distribute the net amount of the revenues as follows:

(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

(A) The first ninety thousand dollars (\$90,000) of the remainder during each fiscal year shall be credited to the County and Circuit Clerks Continuing Education Fund, which is established in the State

Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks in this state, as provided by appropriations enacted by the General Assembly and shall be used as follows:

(i)(a) Forty-five thousand dollars (\$45,000) for county clerks' continuing education.

(b) Any unexpended balances of moneys designated for county clerks' continuing education shall be retained exclusively for the purpose of county clerks' continuing education; and

(ii)(a) Forty-five thousand dollars (\$45,000) for circuit clerks' continuing education.

(b) Any unexpended balances of moneys designated for circuit clerks' continuing education shall be retained exclusively for the purpose of circuit clerks' continuing education; and

(B) The remainder of the ten percent (10%) of the remainder available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county where the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund; and

(2) Ninety percent (90%) of the remainder of the revenues shall be distributed as follows:

(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-1983 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(B)(i) After making the distribution of the revenues as provided in subdivision (b)(2)(A) of this section, the remainder available each fiscal year shall be credited as special revenues to the State Administration of Justice Fund to be used for supplementing moneys in the State Administration of Justice Fund for court reporter salaries and expenses in the event that the moneys available in the Court Reporter's Fund are inadequate during any fiscal year to make the necessary payments for salary and related expenses of the various court reporters of the state.

(ii) Any amount received over and above this amount shall be credited as special revenues to the County Aid Fund.

History. Acts 1971, No. 275, § 6; 1983, No. 754, § 5; A.S.A. 1947, § 84-4306; Acts 1987, No. 729, § 6; 1993, No. 1054, § 1; 1995, No. 270, § 13; 1995, No. 383, § 2; 1997, No. 788, § 28; 1997, No. 1341, § 27; 1999, No. 361, § 1; 2001, No. 348, § 6; 2007, No. 246, § 3.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 383. This section was also amended by Acts 1995, No. 270, § 13, to read as follows:

"(a) Those revenues derived from the additional tax levied by § 26-60-105(b)

shall be deposited by the Director of the Department of Finance and Administration in the State Treasury as special revenues and distributed according to § 15-12-103.

“(b) Those revenues derived from the tax levied in § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration in the State Treasury, and the Treasurer of State shall, after deducting three percent (3%) thereof for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law, distribute the net amount thereof as follows:

“(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

“(A) The first forty thousand dollars (\$40,000) thereof during each fiscal year shall be credited to the County and Circuit Clerks Continuing Education Fund, which is established in the State Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks in this state, as provided by appropriations enacted by the General Assembly; and

“(B) The remainder of the ten percent (10%) thereof available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county in which the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund;

“(2) Ninety percent (90%) of the remainder thereof shall be distributed as follows:

“(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-83 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by

and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

“(B) After making the distribution thereof as provided in subdivision (2)(A) of this subsection, the remainder available each fiscal year shall be credited as special revenues to the County Aid Fund to be used for supplementing moneys therein for court reporter salaries and expenses as provided by law. Any amount received over and above this amount shall be deposited into the State Treasury as general revenues.”

Acts 2007, No. 793, § 38, provided: “SPECIAL FUNDING PROVISION - REAL ESTATE TRANSFER TAX. For the biennium ending June 30, 2009, revenues derived from the tax levied by Arkansas Code § 26-60-105(b) shall be credited by the Treasurer of State each fiscal year of the biennium in the order and percentage and amounts as follows:

“(1) Three percent (3%) for distribution to the Constitutional Officers Fund and the State Central Services Fund;

“(2) Of the eighty percent (80%) of the net amount to be credited to the Arkansas Natural and Cultural Resources Grants and Trust Fund, the first four million five hundred thousand dollars (\$4,500,000) shall be distributed to the General Revenue Fund Account of the State Apportionment Fund; and

“(3) The remainder as provided in Arkansas Code § 15-12-103(b)(1) - (3).”

Publisher's Notes. As to the disposition of moneys collected under the provisions of Acts 1969, No. 239, see Acts 1971, No. 275, § 7.

Amendments. The 2007 amendment, in the introductory paragraph of (b)(1)(A), substituted “ninety thousand dollars (\$90,000)” for “sixty thousand dollars (\$60,000),” and added “shall be used as follows” at the end; and added (b)(1)(A)(i) and (b)(1)(A)(ii).

Cross References. Legislative intent of Acts 1997, Nos. 788 and 1341, § 16-10-601.

Transition to state funding, § 16-87-301.

CASE NOTES

Constitutionality.

The provisions of Acts 1969, No. 239, § 6, authorizing state agencies to pledge

portions of the tax collected for the payment of “revenue bonds,” violated Ark. Const. Amend. 20. *Borchert v. Scott*, 248

Ark. 1041, 460 S.W.2d 28 (1970) (decision under prior law).

CHAPTER 61

TAX ON TIMBERLANDS AND RANGELANDS

SECTION.

- 26-61-101. Title.
- 26-61-102. Definition.
- 26-61-103. Levy of tax.
- 26-61-104. Nature of tax.
- 26-61-105. Lien on property.
- 26-61-106. [Repealed.]
- 26-61-107. Classification of lands.

SECTION.

- 26-61-108. Time for payment.
- 26-61-109. Penalty and delinquency.
- 26-61-110. Disposition of taxes collected.
- 26-61-111. Failure of county officials to collect taxes.
- 26-61-112. Exemption from tax.

Cross References. Severance tax, § 26-58-101 et seq.

Preambles. Acts 1969, No. 354 contained a preamble which read: "Whereas, the State Forestry Commission provides a statewide program for the prevention and suppression of forest fires; and

"Whereas, the timber resources of this State constitute one of the major sources of income in this State, and the preservation and protection of such timber resources are essential to the public welfare; and

"Whereas, the forest fire protection services and programs of the State Forestry Commission are of benefit to each owner of timberland in this State, and it is appropriate that the owners of timberlands participate in defraying the cost of such services,

"Now Therefore ..."

Effective Dates. Acts 1969, No. 354, § 8: Apr. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest fire protection and that the immediate passage of this Act is necessary in order that appropriate standards may be established for the enforcement of the tax on timberlands imposed herein and in order to enable the respective county officials to perform their duties under the provisions of this Act in order that taxes on timberlands due for the calendar year 1969 may be placed on the tax books for collection in 1970. Therefore, an emergency is hereby

declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 668, § 4: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 354 of 1969 provided for the levy of a special Forest Fire Protection Tax to assist the State Forestry Commission in defraying the cost of providing a Statewide program for the prevention and suppression of forest fires; that said Act 354 of 1969 provided for annual remittance of the taxes collected to the State Treasurer; that the State Forestry Commission vitally needs the moneys collected under the Forest Fire Protection Tax Act of 1969 to defray salaries and other expenses incurred by the Commission throughout each fiscal year; and that only by the immediate passage of this Act that provisions can be made whereby quarterly remittance of the Forest Fire Protection Tax would be made to the State Treasurer, thereby providing a more even flow of the revenues derived from said tax for the support of the State Forestry Commission. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 388, § 7: Mar. 10, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commis-

sion is in need of additional funds in order to continue and improve its statewide program of forest, pasture and rangeland fire protection and to defray the costs of its programs for the development, protection and preservation of the forest, range and pasturelands in the State and that the immediate passage of this Act is necessary in order to enable the respective County officials to perform their duties under this Act in order that taxes on timberlands and rangelands, but shall not include pasturelands due for the calendar year 1977 may be placed on the tax books for collection in 1978. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 730, § 18: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the

appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1993, Nos. 865 and 1112, § 7: Apr. 2, 1993 and Apr. 13, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Forestry Commission is in need of additional funds in order to continue and improve its statewide program of forest fire protection and to defray the costs of its programs for the development, protection, and preservation of the forest lands in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-61-101. Title.

This chapter shall be known and cited as the "Forest Fire Protection Tax Act of 1969".

History. Acts 1969, No. 354, § 5; A.S.A. 1947, § 84-314.

26-61-102. Definition.

As used in this chapter, "timberlands" shall be defined in the manner prescribed in Arkansas Constitution, Amendment 59, and legislation enacted to implement the provisions of Arkansas Constitution, Amendment 59.

History. Acts 1977, No. 388, § 1; 1981, No. 426, § 2; 1985, No. 1010, § 2; A.S.A. 1947, § 84-310.1.

Publisher's Notes. Acts 1985, No. 1010, § 4, provided that the provisions of this act shall be applicable with respect to taxes levied on timber lands in 1985 for collection in 1986.

Ark. Const. Amend. 59, referred to in this section, repealed Ark. Const., Art. 16, § 5, and substituted a new section therefor, and added Ark. Const., Art. 16, §§ 14-16.

26-61-103. Levy of tax.

There is levied on all timberlands in this state an annual tax of fifteen cents (15¢) per acre to be collected in the manner provided in this chapter for deposit into the State Treasury for credit to the State Forestry Fund as special revenues to be used for the maintenance, operation, and improvement of the Arkansas Forestry Commission in its statewide program for the detection, prevention, and suppression of forest fires.

History. Acts 1969, No. 354, § 1; 1977, No. 388, § 2; 1981, No. 426, § 1; 1985, No. 1010, § 1; A.S.A. 1947, § 84-310; Acts 1993, No. 865, § 1; 1993, No. 1112, § 1.

Publisher's Notes. As to applicability of 1985 amendment see Publisher's Notes to § 26-61-102.

Acts 1993, Nos. 865 and 1112, § 3, provided: "The Arkansas Forestry Commission is hereby authorized to promul-

gate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this act and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the Arkansas Forestry Commission in such manner as may be necessary to support the programs of the commission as directed by the Governor and Legislature."

26-61-104. Nature of tax.

The tax levied in this chapter shall not be construed as an ad valorem tax but shall constitute a special tax upon each acre of timberland to assist in defraying the cost of a statewide program of forest fire protection.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312.

26-61-105. Lien on property.

The tax if not paid in the manner provided in this chapter shall constitute a lien upon and bind the property on which the tax is imposed until paid.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312.

26-61-106. [Repealed.]

Publisher's Notes. This section, concerning the timberland tax due date, was repealed by Acts 1993, No. 1039, § 6. The

section was derived from the following sources: Acts 1969, No. 354, § 4; A.S.A. 1947, § 84-313.

26-61-107. Classification of lands.

(a) The Assessment Coordination Department shall establish standards for the classification of lands in this state which are deemed as timberlands and shall certify these standards to the respective county assessors of the various counties in this state.

(b)(1) It shall be the duty of the several county assessors in the respective counties of this state to identify upon the assessment records of all taxable real property in their respective counties the number of acres of property which are classified as timberlands.

(2) This information shall be extended on the assessment records submitted to the respective county clerks and shall be extended on the tax books, at the rate of tax per acre of timberlands as provided in this chapter, as a separate item of taxes to be collected by the respective county collectors at the same time that real property taxes are paid.

(c) The county clerk shall be entitled to a fee of two percent (2%) of the taxes collected under this chapter to defray the costs incurred by the county clerk in performing his or her duties in connection with the taxes levied in this chapter.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311.

26-61-108. Time for payment.

The special taxes levied under the provisions of this chapter shall be paid by the respective owners of timberlands at the time real property taxes are paid but in no event later than October 10 of the year next following the year in which the taxes were extended on the tax records.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311; Acts 1993, No. 1039, § 1.

26-61-109. Penalty and delinquency.

(a) If the tax is not paid within the time provided in this chapter, a penalty of up to twenty-five percent (25%) as determined by ordinance of the county quorum court of the amount shall be added thereto and shall be collected at the time delinquent real property taxes thereon are paid.

(b) Any delinquent taxes under the provisions of this chapter shall be collected in the same procedures as provided by law for the collection and payment of taxes on real estate. These taxes shall be transmitted monthly by the county collector to the county treasurer for deposit with the Arkansas Forestry Commission as provided in this chapter.

History. Acts 1969, No. 354, § 3; A.S.A. 1947, § 84-312; Acts 1993, No. 1039, § 2.

26-61-110. Disposition of taxes collected.

(a) The county treasurer on or before the twentieth day following the end of each calendar quarter shall transmit to the Arkansas Forestry Commission all taxes collected under the provisions of this chapter during the preceding calendar quarter.

(b) The county collector shall be allowed a fee of two percent (2%) as a fee of his or her office to defray the cost of collection, and the county treasurer shall be allowed a two percent (2%) commission in accordance with § 21-6-302.

(c) The commission upon receipt thereof shall deposit the same with the Treasurer of State, who shall deposit the moneys as special revenues into the State Forestry Fund as provided in § 26-61-103.

History. Acts 1969, No. 354, § 2; 1971, No. 668, § 1; A.S.A. 1947, § 84-311; Acts 1993, No. 1039, § 3.

26-61-111. Failure of county officials to collect taxes.

(a) It is found and determined by the General Assembly that the Arkansas Forestry Commission is in need of additional funds for the protection of the forestlands of this state from forest fires and for the performance of the various duties required to be performed by the commission, and it is further determined by the General Assembly that the commission derives its support from:

(1) The allocation of general revenue funds to partially defray its operating costs;

(2) The allocation of timber and timber products severance taxes; and

(3) The income derived from the taxes levied on timberland under the provisions of this chapter.

(b) The General Assembly further determines that county officials in certain counties of this state are not enforcing the duties imposed upon their respective offices with respect to the levy and collection of the forest fire protection tax as intended by law and that, in order to recover moneys lost for the commission due to the failure of these officials to levy and collect these taxes and to assure equity in the enforcement of tax collections in this state, those counties in which the officials fail to levy and collect the forest fire protection tax shall be penalized by withholding the amount of general revenues intended to be distributed as county aid to those counties, with the amount withheld to be equal to the amount of the forest fire protection tax that should have been collected.

(c)(1)(A) Each county assessor shall report to the State Forester the number of acres of timberland as reflected in the reappraisal of real property in his or her county under Arkansas Constitution, Amendment 59.

(B) The State Forester may examine the books of the county assessor in order to verify the report.

(2)(A)(i) If the State Forester certifies to the Treasurer of State that the taxable timberland acreage within a county under this chapter has decreased in any year to less than ninety-five percent (95%) of the taxable timber land acreage as determined by the reassessment of property under Arkansas Constitution, Amendment 59, the Trea-

surer of State shall withhold from general revenues within the County Aid Fund an amount calculated by multiplying five cents (5¢) by the number of taxable timberland acres which the State Forester certifies as having not been taxed that year under this chapter.

(ii) The Treasurer of State shall place in escrow the funds withheld pending further instructions by the State Forester.

(B)(i) Within six (6) months after certification, the State Forester shall examine the records of the county assessor and certify to the Treasurer of State the amount of forest fire protection tax revenues which were not collected as a result of errors or omissions, and that amount shall be transferred by the Treasurer of State from the escrow account to the State Forestry Fund to be used for the maintenance, operation, and support of the commission.

(ii) The remainder of the county's escrowed funds shall be distributed as county aid to the county.

History. Acts 1981, No. 730, § 17; 1985, No. 1010, § 3; A.S.A. 1947, § 84-314.1.

Publisher's Notes. As to applicability of 1985 amendment see Publisher's Notes to § 26-61-102.

26-61-112. Exemption from tax.

Disabled veterans, surviving spouses of disabled veterans, and surviving minor dependent children of disabled veterans who are eligible for the exemption from the payment of all state taxes on the homestead and personal property owned by them, as provided for in § 26-3-306, shall be exempt from the payment of the tax levied in this chapter if the amount of tax owed is less than five dollars (\$5.00).

History. Acts 1993, No. 1082, § 1; 1995, No. 1296, § 88.

CHAPTER 62

ALTERNATIVE FUELS TAX

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. RATES, LICENSES, AND RECORDS.

Cross References. Arkansas Alternative Fuels Development Act, § 15-13-101 et seq.

Effective Dates. Acts 1993, No. 1119, § 28; July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that no provisions currently exist in the Arkansas Code regarding the taxation of certain alternative fuels utilized in propelling motor vehicles in this state; that such vehicles are currently being operated

on the highways, roads and streets of this state without the payment of any fuel taxes thus creating an inequity among the various classes of road-users in this state. It is further found that only by the effectiveness of this act as soon as practicable may such inequity be corrected. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

RESEARCH REFERENCES

Am. Jur. 7A Am. Jur. 2d Autom. & High. Traff. § 184.
 27A Am. Jur. 2d Energy § 1, § 60 et seq.

64 Am. Jur. 2d Pub. Util. § 15.5.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-62-101. Title.
 26-62-102. Definitions.
 26-62-103. Penalties.
 26-62-104. Rules and regulations.
 26-62-105. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.
 26-62-106. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

SECTION.

26-62-107. Assessment of delinquent tax — Time limitations.
 26-62-108. Conflicts with Arkansas Tax Procedure Act.
 26-62-109. Disposition of revenue.
 26-62-110. Conflicts with other laws.
 26-62-111. Audits.

Effective Dates. Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the

Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-62-101. Title.

This chapter may be known and cited as the "Alternative Fuels Tax Law".

History. Acts 1993, No. 1119, § 1.

26-62-102. Definitions.

As used in this chapter:

(1)(A) "Alternative fuels" means and includes all liquids or combustion gases used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, including, but not limited to, natural gas fuels as defined in subdivision (9) of this section.

(B) "Alternative fuels" also means and includes:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing eighty-five percent (85%) or more or such percentage, but not less than seventy percent (70%), as determined by the United States Secretary of Energy by rule to provide for requirements relating to cold start, safety, or vehicle functions, by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels;

(iii) Hydrogen;

(iv) Coal-derived liquid fuels;

(v) Fuels, other than alcohol, derived from biological materials;

(vi) Electricity, including electricity from solar energy; and

(vii) Any other fuel the United States Secretary of Energy determines by rule is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(C) "Alternative fuels" does not include fuels subject to the:

(i) Taxes levied by the Motor Fuel Tax Law, § 26-55-201 et seq.; or

(ii) Taxes or fees levied by the Special Motor Fuels Tax Law, § 26-56-101 et seq;

(2) "Alternative fuels supplier" means and includes every person who:

(A) Sells alternative fuels for the purpose of delivering alternative fuels or delivers alternative fuels into the fuel tanks of motor vehicles; or

(B) Sells alternative fuels to any user or dealer, including an interstate user, or an IFTA carrier user, which user or dealer delivers alternative fuels into the fuel tanks of motor vehicles;

(3) "Dealer" means and includes every person who sells or delivers alternative fuels to a user at retail for use in motor vehicles;

(4) "Director" means the Director of the Department of Finance and Administration or his or her duly authorized agents;

(5) "Gallon equivalent" or "equivalent gallon" means a quantity of alternative fuels which is the equivalent of one United States gallon (1 U.S. gal.) of gasoline as determined by the director based on United States standards or industry standards, provided that one United States gallon (1 U.S. gal.) of gasoline shall be the equivalent of one hundred cubic feet (100 c.f.) of natural gas fuels;

(6) "Interstate user" means any person, except an IFTA carrier user as defined in subdivision (7) of this section, who imports or exports alternative fuels into or out of this state in the fuel supply tanks of motor vehicles owned or operated by that person;

(7) "IFTA carrier" or "IFTA carrier user" means any person who operates a motor vehicle licensed pursuant to the International Fuel Tax Agreement and imports or exports alternative fuels into or out of this state in the fuel supply tanks of motor vehicles owned or operated by that carrier;

(8) "Motor vehicles" or "vehicles" means and includes any automobile, truck, truck-tractor, tractor, bus, vehicle, or other conveyance which is propelled by an internal combustion engine or motor and is licensed or required to be licensed for highway use;

(9) "Natural gas fuels" means and includes all mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form;

(10) "Person" means every natural person, fiduciary, partnership, limited liability company, firm, association, corporation, business trust combination acting as a unit, any receiver appointed by any state or federal court, or any municipality, county, or any subdivision, department, agency, board, commission, or other instrumentality of this state;

(11) "Purchase" shall include any acquisition of ownership.

(12) "Sale" shall include any exchange, gift, or other disposition; and

(13) "Use" or "used" means:

(A) Keeping alternative fuels in storage and selling, using, or otherwise disposing of the same for the operation of motor vehicles;

(B) Selling alternative fuels in this state to be used for operating motor vehicles; or

(C) Operating a motor vehicle in this state with alternative fuels;

(14) "User" means and includes every person who delivers or causes to be delivered any alternative fuels into the supply tank of a motor vehicle or motor vehicles used or operated by that person;

History. Acts 1993, No. 1119, § 2; 1995, No. 1160, § 41.

26-62-103. Penalties.

Any person who violates or fails or refuses to comply with any provision of this chapter for which a specific penalty is not otherwise prescribed shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned not less than ten (10) days nor more than sixty (60) days, or both so fined and imprisoned.

History. Acts 1993, No. 1119, § 3.

26-62-104. Rules and regulations.

The Director of the Department of Finance and Administration is authorized and empowered in consultation with the Director of Highways and Transportation of the Arkansas State Highway and Transportation Department to make and promulgate such rules and regulations not inconsistent with this chapter as they shall deem necessary and desirable to facilitate the collection of the taxes levied in this chapter and to otherwise effectuate the purposes of this chapter, and these rules and regulations shall have the same effect as if specifically set forth in this chapter.

History. Acts 1993, No. 1119, § 4.

26-62-105. Failure, refusal, etc., to make report or pay tax — Penalties, interest — Attorney's fees.

(a) Once an alternative fuels supplier, user, interstate user, or IFTA carrier user of alternative fuels has become liable to file a report with the Director of the Department of Finance and Administration, he or she must continue to file a report, even though no tax is due, until such time as he or she notifies the director in writing that he or she is no longer liable for those reports.

(b)(1) Any alternative fuels supplier, user, interstate user, or IFTA carrier user of alternative fuels who fails, neglects, or refuses to make any report required by this chapter or to pay any tax levied at the time and in the manner required in this chapter in addition to any other penalty provided in this chapter shall be liable for the amount of the tax due, together with a penalty of twenty percent (20%) or a minimum of five dollars (\$5.00), whichever is greater, plus interest at the rate of ten percent (10%) per annum from the date due until paid.

(2) If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall be imposed and collected as attorney's fees.

History. Acts 1993, No. 1119, § 5.

26-62-106. False or fraudulent reports — Fraudulent avoidance of tax — Penalty.

Any person who makes a false or fraudulent report hereunder or who fraudulently attempts to avoid the payment of the tax herein levied on any alternative fuels shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned.

History. Acts 1993, No. 1119, § 6.

26-62-107. Assessment of delinquent tax — Time limitations.

No assessment of delinquent alternative fuels tax or penalties or interest shall be made for any month after the expiration of three (3) years from the date set for the filing of such monthly return. However, in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1993, No. 1119, § 7.

26-62-108. Conflicts with Arkansas Tax Procedure Act.

The provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall be read in pari materia with this chapter, and in the event of

any conflict with that chapter and this chapter, the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall control.

History. Acts 1993, No. 1119, § 24.

26-62-109. Disposition of revenue.

(a) All of the taxes, fees, penalties, and interest collected under the provisions of this chapter shall be classified as special revenues and shall be deposited into the State Treasury. After deducting therefrom the three percent (3%) for credit to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to the State Highway and Transportation Department Fund.

(b) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1993, No. 1119, § 8.

26-62-110. Conflicts with other laws.

All laws and parts of laws in conflict with this chapter are hereby repealed, provided that nothing in this chapter is intended to nor shall it abrogate any of the provisions of the Motor Fuel Tax Law, § 26-55-201 et seq., nor shall it abrogate any of the provisions of the Special Motor Fuels Tax Law, § 26-56-101 et seq., which provisions apply to the taxation of motor fuels, distillate special fuel, and liquefied gas special fuels, it being the intent of this chapter that such fuels continue to be taxed in accordance with those tax laws and not in accordance with this chapter.

History. Acts 1993, No. 1119, § 25.

26-62-111. Audits.

In all audits conducted by the Arkansas State Highway and Transportation Department pursuant to this chapter, the Arkansas State Highway and Transportation Department may call upon the Director of the Department of Finance and Administration for assistance.

History. Acts 1993, No. 1119, § 23.

SUBCHAPTER 2 — RATES, LICENSES, AND RECORDS

SECTION.	SECTION.
26-62-201. Imposition of tax — Exemptions.	sue invoices, or file reports — Tax, penalties, and interest.
26-62-202. Collection and payment of tax.	26-62-209. Interstate users and IFTA carrier users — Reports — Computation of tax and refunds.
26-62-203. Separate meters for taxable natural gas fuels and residential or other tax-free natural gas.	26-62-210. Interstate users and IFTA carrier users — Tax refund procedure.
26-62-204. Licenses and bonds for alternative fuels suppliers and interstate users, IFTA carrier users, etc. — Generally.	26-62-211. Entry slips — Tax on out-of-state motor vehicle use — Penalties.
26-62-205. Sales tickets.	26-62-212. Power to stop, investigate, and impound vehicles — Assessment of tax.
26-62-206. Alternative fuels suppliers' and users' reports — Computation and remittance of tax.	26-62-213. Unlawful activities regarding operation of motor vehicles.
26-62-207. Records required — Invoices — Falsification of records.	26-62-214. Conversion of vehicles for use of alternative fuels.
26-62-208. Prima facie presumptions — Failure to keep records, is-	

26-62-201. Imposition of tax — Exemptions.

(a)(1) There is hereby levied and imposed an excise tax per gallon equivalent at the rate set forth in subsection (b) of this section on each type of alternative fuels sold or used in this state for the purpose of propelling a motor vehicle or motor vehicles in this state or purchased for sale or use in this state for the purpose of propelling a motor vehicle or motor vehicles in this state.

(2) The Director of the Department of Finance and Administration shall determine the various types of alternative fuels being utilized in this state and the applicable rates to be imposed for each type fuel in accordance with the following provisions of this section, provided that the Director of the Department of Finance and Administration in his or her initial determination at a minimum shall find at least one (1) type of alternative fuels, specifically, natural gas fuels.

(b) The tax rate for each equivalent gallon for each type of alternative fuels shall be in accordance with the following table:

Number of Motor Vehicles Licensed in Arkansas Utilizing Alternative Fuels (for each type of alternative fuels)	Tax Rate Per Equivalent Gallon (for each type of alternative fuels)
0 — 999	\$0.050
1,000 — 1,499	\$0.085
1,500 — 1,999	\$0.105
2,000 — 2,499	\$0.125

Number of Motor Vehicles Licensed in Arkansas Utilizing Alternative Fuels (for each type of alternative fuels)	Tax Rate Per Equivalent Gallon (for each type of alternative fuels)
2,500 — 2,999	\$0.145
3,000 & over	\$0.165

(c)(1)(A)(i) The tax rate set forth in subsection (b) of this section for each type of alternative fuels from July 1, 1993, through March 31, 1994, shall be determined and published by the Director of the Department of Finance and Administration prior to June 1, 1993, and such rates shall be effective for each type of alternative fuels through March 31, 1994.

(ii) The tax rate set forth in subsection (b) of this section for each type of alternative fuels shall be adjusted if necessary by the Director of the Department of Finance and Administration to be effective on April 1, 1994, and on April 1 of each year thereafter based upon the number of vehicles utilizing alternative fuels, by each type of alternative fuels, licensed in this state, as determined by the Director of the Department of Finance and Administration, as of December 31 of the preceding calendar year.

(B) If a change in the tax rate in accordance with subsection (b) of this section for any type of alternative fuels is required, the Director of the Department of Finance and Administration shall include this in the report required by this section, and the Director of the Department of Finance and Administration shall also notify each alternative fuels supplier of the new tax rate not later than thirty (30) days prior to the effective date of such change.

(2) Notwithstanding any other provision of this chapter, in determining the number of alternative fuels vehicles licensed in this state by each type of alternative fuels in order to determine the tax rate per equivalent gallon, there shall not be taken into account any alternative fuels vehicles owned, licensed, or used by the United States Government, or any agency or instrumentality thereof.

(d) It is the intent of the tax levy set forth in this section to tax each particular type of alternative fuels depending upon the number of alternative fuels vehicles using the particular type of alternative fuels licensed in Arkansas.

(e)(1) The Director of the Department of Finance and Administration is authorized to develop a procedure such as one pursuant to which the type of alternative fuels or other type of fuel is noted on the certificate of title or certificate of registration of such vehicle.

(2) It is the intention of this subsection to develop a system for the Director of the Department of Finance and Administration, the Alternative Fuels Commission [abolished], and other officials of the State of Arkansas to know the precise number of vehicles utilizing alternative fuels and other fuels licensed in this state, both in the aggregate and by the type of fuel propelling such vehicle.

(f) Not later than June 1, 1993, February 15, 1994, and the fifteenth day of February each year thereafter, the Director of the Department of Finance and Administration shall file a written report with the Director of State Highways and Transportation and the Director of the Alternative Fuels Commission [abolished] setting forth the number of vehicles utilizing alternative fuels and other types of fuels licensed in this state as of the end of the preceding calendar year, both in the aggregate and by each type of fuel, and for the report due February 15, 1994, and the fifteenth day of February for each year thereafter, the amount of tax revenue received by the State of Arkansas on the tax levied by this chapter. The Director of the Department of Finance and Administration shall also state the tax rate for the next twelve (12) months commencing as of the first day of April of such year for each type of alternative fuel.

(g) Sales to the United States Government are exempt from the tax levied by subsection (a) of this section.

(h) The tax levied herein shall not apply to alternative fuels imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty (30) equivalent gallons.

History. Acts 1993, No. 1119, § 9.

No. 873, § 3. Acts 2007, No. 873, § 1, created the Arkansas Alternative Fuels Development Program to be administered by the Arkansas Agricultural Department. See § 15-13-301.

A.C.R.C. Notes. The Alternative Fuels Commission referred to in subdivision (e)(1) of this section and subsection (f) of this section was abolished by Acts 2007,

26-62-202. Collection and payment of tax.

(a) The tax levied by this chapter shall be collected and paid by alternative fuels suppliers on all alternative fuels sold or delivered by such suppliers when:

- (1) Delivered into the fuel supply tanks of a motor vehicle;
- (2) Sold to a dealer or user; or

(3) Used in any motor vehicle owned or operated by that alternative fuels supplier. The Director of the Department of Finance and Administration shall make and promulgate rules and regulations for a system for recordkeeping requirements to be kept by such suppliers in fulfilling this subdivision (a)(3).

(b) The tax levied by this chapter shall be paid by an interstate user who uses alternative fuels in this state as provided by §§ 26-62-209 and 26-62-211.

(c) The tax levied by this chapter shall be paid by any person who uses alternative fuels in this state on which the tax levied in this chapter has not been paid in accordance with the provisions of § 26-62-209 or § 26-62-211.

(d) The tax levied by this chapter shall be paid by an IFTA carrier user who uses alternative fuels in this state as provided by § 26-62-209.

History. Acts 1993, No. 1119, § 10.

26-62-203. Separate meters for taxable natural gas fuels and residential or other tax-free natural gas.

(a) No user, including an alternative fuels supplier of natural gas fuels, who utilizes natural gas for residential or other tax-free purposes, shall use such natural gas fuels in motor vehicles unless such natural gas fuels are removed through a separate meter installed by the alternative fuels supplier for such purposes.

(b) All alternative fuels suppliers shall monitor such separate meters for billing and taxation purposes.

(c)(1) Such users shall be licensed and bonded only if required by § 26-62-204 but shall remit all taxes to the alternative fuels supplier upon billing by that supplier, which supplier shall further remit such taxes to the Director of the Department of Finance and Administration as provided in § 26-62-206.

(2) Such user, however, at the time of the installation of the separate meter shall report to the director the:

(A) Number of vehicles;

(B) Models and makes;

(C) License numbers;

(D) Vehicle identification numbers; and

(E) Any other information required by the director pursuant to rules and regulations of the director.

History. Acts 1993, No. 1119, § 11.

26-62-204. Licenses and bonds for alternative fuels suppliers and interstate users, IFTA carrier users, etc. — Generally.

(a) No person shall commence operations as an alternative fuels supplier, interstate user, or IFTA carrier user of alternative fuels without first procuring a license for that purpose from the Director of the Department of Finance and Administration. This license shall be issued and remain in effect until revoked as provided in this section.

(b)(1) Each application for a license as an alternative fuels supplier, interstate user, or IFTA carrier user of alternative fuels, and each license, shall have as a condition that the applicant and holder shall comply with the provisions of this chapter.

(2)(A) Each application for a license as an alternative fuels supplier, interstate user, or IFTA carrier user, and each such license, shall have as a further condition that the applicant and holder shall not deliver or permit delivery into the fuel supply tanks of motor vehicles any alternative fuels on which the tax levied by this chapter is not collected or will be remitted pursuant to § 26-62-209.

(B) A taxable use of alternative fuels on which the tax is not collected by an applicant for, or a holder of, an alternative fuels supplier license or on a licensed interstate user or IFTA carrier user

on which the tax is not remitted pursuant to § 26-62-209, in addition to the penal provisions prescribed in this chapter, shall cause immediate cancellation of the applicant or holder's license.

(c)(1)(A) Every alternative fuels supplier shall file with the director a surety bond of not less than one and one-half (1½) times or one hundred fifty percent (150%) of the prior six-months' average alternative fuels tax due which is based upon the gallon equivalent of alternative fuels to be sold or distributed:

(i) As shown by the application for a license if the applicant has not previously been engaged in the business of an alternative fuels supplier; or

(ii) As shown by sales for the previous year if the applicant previously has been engaged in such business in this state.

(B) However, no bond shall be filed for less than one thousand dollars (\$1,000).

(2) If the director deems it necessary to protect the state in the collection of alternative fuels taxes, the director may require any alternative fuels supplier to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months' average alternative fuels tax due.

(3)(A) However, the director is authorized to waive the posting of bond by any licensed alternative fuels supplier organized and operating under the laws of Arkansas and wholly owned by residents of this state who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting alternative fuels taxes during the three-year period immediately preceding application by the alternative fuels supplier for waiver of bond.

(B) If any alternative fuels supplier whose bond has been waived by the director as authorized in subdivision (c)(3)(A) of this section subsequently becomes delinquent in remitting alternative fuels taxes to the director, the director may require that the alternative fuels supplier post a bond in the amount required in this section, and the alternative fuels supplier shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

(d)(1) Each application of an interstate user or IFTA carrier user for a license shall be accompanied by a surety bond of a surety company authorized to do business in this state, in favor of the director, satisfactory to the director, and in an amount to be fixed by the director of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), guaranteeing the payment of any and all taxes, penalties, interest, attorney's fees, and costs levied by, accrued, or accruing under this chapter.

(2) Any violation of this chapter shall be cause for revocation of any license issued under this chapter.

(e)(1) The bond or bonds shall be issued by a surety company qualified to do business in Arkansas, which shall be executed by the alternative fuels supplier, interstate user, or IFTA carrier user as the principal obligor and shall be made payable to the State of Arkansas as the obligee.

(2) The bond shall be conditioned upon the prompt filing of true reports and the payment by the alternative fuels supplier, interstate user, or IFTA carrier user to the director of any and all alternative fuels taxes which are levied or imposed by the State of Arkansas, together with any and all penalties and interest thereon, and generally, upon faithful compliance with the provisions of this chapter.

(f)(1) In the event that liability upon the bond filed pursuant to this section by the alternative fuels supplier, interstate user, or IFTA carrier user with the director shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if, in the opinion of the director, any surety on the bond shall have become unsatisfactory or unacceptable, then the director may require the filing of a new bond with a satisfactory surety in the same form and amount; failing which, the director shall immediately cancel the license of the alternative fuels supplier, interstate user, or IFTA carrier user.

(2) If a new bond shall be furnished, the director shall cancel the bonds for which the new bond shall be substituted.

(g) In the event that upon hearing of which the alternative fuels supplier, interstate user, or IFTA carrier user shall be given five (5) days' notice in writing, the director shall decide that the amount of the existing bond is insufficient to ensure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which said alternative fuels supplier, interstate user, or IFTA carrier user is or may at any time become liable, then the alternative fuels supplier, interstate user, or IFTA carrier user upon written demand of the director shall immediately file an additional bond in the same manner and form and with a surety company thereon approved by the director in any amount determined by the director to be necessary to secure at all times the payment to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this chapter; failing which, the director shall immediately cancel the license of the alternative fuels supplier, interstate user, or IFTA carrier user.

(h)(1)(A) Any surety on any bond furnished as provided in this section shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which a surety shall have lodged with the director a written request to be released and discharged.

(B) However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(2) Upon receipt of notice of such request, the director shall promptly notify the alternative fuels supplier, interstate user, or IFTA carrier user who furnished the bond, and unless the alternative fuels supplier, interstate user, or IFTA carrier user, on or before the expiration of the sixty-day period, files with the director a new bond with a surety company satisfactory to the director in the amount and form as provided in this section, the director shall immediately cancel the license of that alternative fuels supplier, interstate user, or IFTA carrier user.

(3) If a new bond shall be furnished as provided in this section, the director shall cancel the bond for which the new bond shall be substituted.

(i) In lieu of furnishing a bond or bonds executed by a surety company as provided in this section, any alternative fuels supplier, interstate user, or IFTA carrier user may furnish a bond or other instrument, in form prescribed by the director, equal to the amount of the bond or bonds required by this section which will provide security or payment of all amounts as described in this section and in compliance with all provisions of this chapter.

(j)(1) Any violation of this chapter shall be cause for revocation of any license issued pursuant to this chapter.

(2)(A) Should his or her license be revoked, any alternative fuels supplier, interstate user, or IFTA carrier user may bring an action against the director in the Pulaski County Circuit Court within fifteen (15) days of the date of revocation to determine whether or not the alternative fuels supplier, interstate user, or IFTA carrier user has in fact violated any of the provisions of this chapter.

(B) If the court determines that the provisions of the law have been violated by the alternative fuels supplier, interstate user, or IFTA carrier user, it shall affirm the director's action in revoking the license.

(k) If any of the provisions of this chapter regarding IFTA carrier users conflicts with the International Fuel Tax Agreement, § 26-55-1101 et seq., entered into by this state, the provisions of the International Fuel Tax Agreement, § 26-55-1101 et seq., shall govern.

History. Acts 1993, No. 1119, § 12.

26-62-205. Sales tickets.

(a)(1) Each alternative fuels supplier shall have available a sufficient number of sales tickets prepared in triplicate to cover sales of alternative fuels under the provisions of this chapter.

(2) The forms for sales tickets shall be numbered and prepared with blank spaces for:

(A) The name and address of the alternative fuels supplier;

(B) The name and address of the purchaser;

(C) The date of the purchase;

(D) The number of gallons equivalent purchased;

(E) The total cost of alternative fuels purchased including taxes; and

(F) Such other information as the Director of the Department of Finance and Administration may require.

(b)(1) The sales tickets shall be issued in triplicate by the alternative fuels supplier and shall be signed by the alternative fuels supplier or his or her authorized agent, and the original and one (1) copy shall be given to the purchaser.

(2) The remaining copy shall be retained by the alternative fuels supplier as a record for a period of at least three (3) years, during which period it shall be subject to inspection by the Director of the Department of Finance and Administration or his or her representative at all reasonable times.

(c) The sales tickets as described in subsections (a) and (b) of this section shall be the only evidence accepted for tax credit by the Director of the Department of Finance and Administration under the provisions of § 26-62-209.

(d) Any licensed alternative fuels supplier or agent or employee of the alternative fuels supplier who issues any sales ticket or invoice to any user showing that the user has purchased a quantity of alternative fuels from the alternative fuels supplier, agent, or employee when, in fact, the user has not purchased alternative fuels or has purchased less alternative fuels than the sales ticket or invoice shows shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(e)(1) The Director of the Department of Finance and Administration, in consultation with the Director of State Highways and Transportation shall promulgate rules and regulations regarding an alternative to the required usage of sales tickets for all sales of natural gas fuels made by alternative fuels suppliers by separate meter as provided in § 26-62-203.

(2) It is the intent of this directive that if a user, other than an interstate user or IFTA carrier user, receives natural gas fuels through a separate meter, there shall be no sales ticket requirement.

History. Acts 1993, No. 1119, § 13; substituted "violation" for "misdemeanor" 2005, No. 1994, § 180; 2007, No. 827, in (d).
§ 234.

Amendments. The 2005 amendment substituted "shall promulgate" for "is authorized and directed to promulgate" in (e)(1).
inserted "or her" in (b)(1) and (2); and

26-62-206. Alternative fuels suppliers' and users' reports — Computation and remittance of tax.

(a)(1) Every alternative fuels supplier on or before the twenty-fifth day of each calendar month shall file with the Director of the Department of Finance and Administration on forms prescribed by the director a report accounting for the alternative fuels taxable under this chapter during the preceding month and shall remit all taxes as reflected by the report to the director at the time of filing such report.

(2) The alternative fuels supplier shall file supporting documents necessary to assure accurate reporting. The reports shall include the following:

(A) An itemized statement of the number of equivalent gallons of alternative fuels sold and delivered into the fuel supply tanks of motor vehicles during the next preceding calendar month by the alternative fuels supplier;

(B) An itemized statement of the number of gallons equivalent of alternative fuels delivered into the fuel supply tanks of motor vehicles owned, leased, or operated by the alternative fuels supplier during the next preceding calendar month by the alternative fuels supplier;

(C) An itemized statement of the number of gallons equivalent of alternative fuels sold through separate meter to a user for the fueling of motor vehicles during the next preceding calendar month by the supplier; and

(D) Such other documents as the director requires.

(b) Every interstate user and IFTA carrier user, on or before the twenty-fifth day of the month following the end of each calendar quarter, shall file with the director on forms prescribed by the director an itemized report showing the quantities of alternative fuels purchased and used in this state during the preceding calendar quarter, together with payments of the tax due thereon.

History. Acts 1993, No. 1119, § 14.

26-62-207. Records required — Invoices — Falsification of records.

(a) Every person required by law to secure a license under this chapter shall keep records in the time and manner and subject to inspection and audit as required by the Arkansas Tax Procedure Act, § 26-18-101 et seq., including a complete record of all alternative fuels taxable under this chapter and sold, delivered, or used by the person, showing for each purchase, receipt, sale, delivery, or use:

(1) The date;

(2) The name and address of the seller from whom the user, interstate user, or IFTA carrier user purchased the fuels and that interstate user or IFTA carrier user's license number; and

(3) An accurate record of the number of gallons equivalent of alternative fuels sold or used for taxable purposes with quantities measured by a meter.

(b)(1) For each delivery of alternative fuels directly into the fuel supply tank of a motor vehicle, the required record shall include a serially-numbered invoice issued in not less than triplicate counterparts on which shall be printed or stamped with a rubber stamp the name and address of the alternative fuels supplier making such delivery and on which shall be shown, in spaces to be provided on that invoice, the:

(A) Date of delivery;

(B) Number of equivalent gallons and kind of alternative fuels so delivered;

(C) Total mileage recorded on the odometer or hub meter of the motor vehicle into which delivered; and

(D) Motor vehicle registration number of the motor vehicle, or the interstate user, or IFTA carrier user's license number, if applicable.

(2) The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered.

(3)(A) One (1) counterpart of the invoice required by this subsection shall be kept by the alternative fuels supplier making such delivery as a part of his or her record and for the period of time and purposes provided in this chapter.

(B) Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Director of the Department of Finance and Administration or his or her representatives until the fuel it covers has been consumed.

(c)(1) Every person who operates a motor vehicle that is equipped to use motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., or equipped to use distillate special fuels taxable under the Special Motor Fuels Tax Law, § 26-56-101 et seq., and alternative fuels interchangeably in the propulsion of the motor vehicle shall carry in the cab compartment of the motor vehicle for inspection by the director or his or her representative not only the counterpart of the serially-numbered invoice required under subsection (b) of this section for the delivery of alternative fuels into the fuel supply tanks of the motor vehicle but also an invoice or receipt from the seller for each delivery into the fuel supply tanks of the motor vehicle of motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., or of distillate special fuels taxable under the Special Motor Fuels Tax Law, § 26-56-101 et seq., which latter invoices or receipts shall show the same information as to date of delivery, quantity, odometer or hub meter mileage, and motor vehicle registration number as is required for the invoice covering alternative fuels.

(2) These invoices shall be carried with the motor vehicle until the types of fuels covered thereby have been consumed.

(d) The willful issuance of any invoice required by this chapter, bill of sale, or receipt which is false, untrue, or incorrect in any material particular, or the alteration or changing except for errors, or forging any such invoice, bill of sale, or receipt, or any duplicate of any such receipt pertaining to alternative fuels, shall constitute a violation of this chapter.

(e) All sales to users made pursuant to § 26-62-203 shall not require the carriage of an invoice by the user, provided that the director shall provide by regulation another means of providing an indication that the tax on the fuel being utilized to propel the motor vehicle will ultimately be paid by the user to the alternative fuels supplier, who is required to remit such tax to the director.

History. Acts 1993, No. 1119, § 15.

26-62-208. Prima facie presumptions — Failure to keep records, issue invoices, or file reports — Tax, penalties, and interest.

(a) Any alternative fuels supplier, user, interstate user, or IFTA carrier user who fails to keep the records, issue the invoices, or file the reports required by this chapter shall be prima facie presumed to have sold, delivered, or used for taxable purposes all alternative fuels shown by a verified audit by the Arkansas State Highway and Transportation Department, the Director of the Department of Finance and Administration, or any authorized representative.

(b)(1) The director is authorized to fix or establish the amount of taxes, penalties, and interest due the State of Arkansas from any record or information available to the director, or to the Arkansas State Highway and Transportation Department, and if the tax claim as developed from that procedure is not paid, the claim and any audit made by the Arkansas State Highway and Transportation Department, the director, or an authorized representative, or any report filed by such alternative fuels supplier, user, interstate user, or IFTA carrier user shall be admissible in evidence in any suit or judicial proceedings filed by the director and shall be prima facie evidence of the correctness of said claim or audit.

(2) However, the prima facie presumption of the correctness of the claim may be overcome by evidence adduced by the alternative fuels supplier, user, interstate user, or IFTA carrier user.

History. Acts 1993, No. 1119, § 16.

26-62-209. Interstate users and IFTA carrier users — Reports — Computation of tax and refunds.

(a) For the purpose of determining whether an interstate user or IFTA carrier user owes alternative fuels tax or is entitled to a credit or refund, the licensed interstate user or licensed IFTA carrier user shall file a quarterly report on or before the twenty-fifth day of the month following the end of each calendar quarter, which shall be made on forms prescribed by the Director of the Department of Finance and Administration, which forms shall include such information as the director may require.

(b) If it shall be determined by the quarterly report that the licensed interstate user or licensed IFTA carrier user has used alternative fuels in this state in excess of the number of equivalent gallons of the fuel upon which the Arkansas tax had been paid, the interstate user or IFTA carrier user shall remit to the director at the time of filing the report an excise tax at the rate as previously determined in accordance with § 26-62-201 per equivalent gallon for the taxable quarter multiplied by the number of equivalent gallons used on which the tax has not been paid.

(c) If it shall be determined that the licensed interstate user or licensed IFTA carrier user has purchased more equivalent gallons of

alternative fuels in this state than he or she has used in this state, then the licensed interstate user or licensed IFTA carrier user shall be entitled to a credit or refund at the rate as previously determined in accordance with § 26-62-201 per equivalent gallon for the taxable quarter for the number of excess equivalent gallons upon which the tax has been paid.

(d) Licensed interstate users or licensed IFTA carrier users may not take credit on reports at a tax rate in excess of that actually paid.

(e)(1)(A) For the purpose of determining whether such a licensed interstate user or licensed IFTA carrier user owes tax or is entitled to a credit or refund, such licensed user shall determine the average miles per equivalent gallon of alternative fuels used.

(B) The average miles per equivalent gallon shall be determined by dividing total miles traveled in all jurisdictions by the total equivalent gallons of alternative fuels used in all jurisdictions.

(C) Such licensed user shall then determine the total amount of alternative fuels used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per equivalent gallon.

(2) The taxpayer's tax liability shall be calculated by multiplying the number of equivalent gallons of alternative fuels used within the State of Arkansas by the applicable tax rate for that calendar quarter per equivalent gallon.

(3) A taxpayer shall be entitled to credits against his or her tax liability for tax-paid alternative fuels purchased within the State of Arkansas.

(f)(1) Whenever any licensed interstate user or licensed IFTA carrier user who fails to maintain adequate mileage or fuel records, then for the purpose of determining the amount the licensed user owes the State of Arkansas for tax on alternative fuels used in this state as provided in this section, the number of equivalent gallons of alternative fuels used in this state shall be determined by an assessment based on the following mileage factors per equivalent gallon of alternative fuels, regardless of the type of alternative fuels, as compared to the appropriate class of vehicle set out in subdivision (f)(2) of this section.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of fewer than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per equivalent gallon of alternative fuels for:

- (A) Class A vehicles shall be twelve (12) miles;
- (B) Class B vehicles shall be eight (8) miles;
- (C) Class C vehicles shall be five (5) miles; and
- (D) Class D vehicles shall be six (6) miles.

(4) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g) For the purpose of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on alternative fuels used in this state, only the above mileage factors per equivalent gallon of alternative fuels for the applicable vehicles shall be utilized.

(h)(1)(A) If a quarterly report of a licensed interstate user or licensed IFTA carrier user results in a net credit, such user may elect to have the credit carried forward and applied against the alternative fuels tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first.

(B) In the alternative, a taxpayer who is entitled to a net credit on his or her quarterly fuel tax report may elect to have the amount of credit refunded to him or her.

(2) A licensed interstate user or licensed IFTA carrier user who has a total tax liability for alternative fuels tax during the previous calendar year of less than one hundred dollars (\$100) upon application to the director may obtain permission to report his or her alternative fuels tax liability on an annual basis. The annual report shall be due on or before the twenty-fifth day of the month following the end of each fiscal year.

(i) The director shall prescribe the appropriate forms necessary for the administration of this chapter. The director may make appropriate rules and regulations necessary to ensure the accurate reporting of the alternative fuels tax.

History. Acts 1993, No. 1119, § 17.

26-62-210. Interstate users and IFTA carrier users — Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly estimate the amount necessary to pay refunds to licensed interstate users and licensed IFTA carrier users of alternative fuels who are entitled to refunds with respect to alternative fuels taxes paid in this state as authorized in § 26-62-209, and upon certification by the Director of the Department of Finance and Administration, the Treasurer of State shall transfer from the gross amount of alternative fuels taxes collected each month the amount to the Interstate Alternative Fuels Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross alternative fuels taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the Director of the Department of Finance and Administration nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim's being filed as a basis for such refund.

(d) The Director of the Department of Finance and Administration in consultation with the Director of State Highways and Transportation is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from licensed interstate users or licensed IFTA carrier users of alternative fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The Director of the Department of Finance and Administration shall first determine with respect to each refund claim filed that the bond of the interstate user or IFTA carrier user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by such user, and the Director of the Department of Finance and Administration may require the increase of the bond if the Director of the Department of Finance and Administration determines it to be inadequate before approving any such claim for refund;

(2) Each licensed interstate user or licensed IFTA carrier user of alternative fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the Director of the Department of Finance and Administration may reject any claim for refund if the Director of the Department of Finance and Administration determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the Department of Finance and Administration in filing the claim therefor;

(3) Each claim for refund must be upon the request of the licensed interstate user or licensed IFTA carrier user, which shall be verified by such user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user or licensed IFTA carrier user of alternative fuels with the Department of Finance and Administration shall reflect thereon the amount of alternative fuels purchased for use in Arkansas during the quarter, the number of equivalent gallons of alternative fuels upon which taxes are due the State of Arkansas for the quarter, and the excess equivalent gallons upon which such user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user or licensed IFTA carrier user may make application for a refund with respect to the number of equivalent gallons of alternative fuels upon which the alternative fuels taxes have been paid during the calendar quarter for which such user is entitled to a refund;

(5) The Director of the Department of Finance and Administration is authorized to promulgate any such rules or regulations the Director of the Department of Finance and Administration deems desirable in consultation with the Director of State Highways and Transportation regarding refunds to licensed interstate users and IFTA carrier users.

History. Acts 1993, No. 1119, § 18.

26-62-211. Entry slips — Tax on out-of-state motor vehicle use — Penalties.

(a) Any unlicensed alternative fuels user, unless exempt from the tax levied herein, operating an out-of-state motor vehicle, upon entering the State of Arkansas, at the point of entry shall secure a copy of an entry slip from the Director of the Department of Finance and Administration or his or her authorized agent or employee.

(b) The entry slip shall be signed by the director or his or her authorized agent or employee, and the entry slip shall also be signed by the driver of the vehicle.

(c) The entry slip shall contain the following information:

- (1) Name and address of the owner or the operator of the vehicle;
- (2) State of registration;
- (3) License number;
- (4) Odometer reading;
- (5) Destination and point of leaving state; and
- (6) Description of vehicle.

(d) The entry slip shall remain in the vehicle for the remainder of the trip over the highways of this state and shall be produced for the inspection of the director or his or her authorized employee or representative, at any point within the state and shall also be produced at the port of exit to the director or his or her authorized agent or employee, for determination of any alternative fuels taxes due the state.

(e) For the purpose of determining the amount the interstate user owes the State of Arkansas for tax on alternative fuels used in this state as provided in this section, the number of equivalent gallons of alternative fuels used in this state shall be determined by an assessment based on the mileage factors per equivalent gallon of alternative fuels set out in § 26-62-209(f) compared to the appropriate class of vehicle set out in § 26-62-209(f).

(f) The alternative fuels tax levied by this chapter shall be paid upon all such fuels used to propel out-of-state motor vehicles upon the highways of this state.

(g) The tax shall be paid by the owner or operator of the motor vehicle in either of the following ways, at the option of the owner or operator:

- (1)(A) By the purchase of a sufficient amount or quantity, as determined above, of alternative fuels from an alternative fuels supplier within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(B) At the time of the purchase of the fuels, the owner or operator of such vehicle shall obtain from the alternative fuels supplier from whom purchased an invoice or sales ticket, on forms approved by the director, which shall contain the:

- (i) Name and address of the seller of the alternative fuels;
- (ii) Name and address of the purchaser;
- (iii) Date of purchase; and
- (iv) Amount or quantity and type of alternative fuels purchased.

(C) The invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state. The invoice or sales ticket shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection and examination of the director or his or her authorized agent or employee, at any reasonable time and place, either within or without this state, upon proper demand therefor;

(2)(A) By the payment to the director or to his or her agent, representative, or employee of the amount of tax which would be due upon a sufficient quantity, as determined above, of alternative fuels to propel the vehicle over the highways of this state.

(B) At the time of payment of the tax, the director or his or her employee or representative shall issue to the person paying the tax a receipt showing:

- (i) The amount of tax paid;
- (ii) The name and address of the owner or operator of the vehicle;
- (iii) A description of the vehicle, including license number and state of registration;
- (iv) The point at which the vehicle entered upon the highways of this state;
- (v) The destination and the place where the vehicle is to leave the highways of this state; and

(vi) Any other information which the director may require, which receipt shall be signed by the director or his or her agent or representative.

(C) The receipt shall remain in the vehicle for the remainder of the trip over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection of the director or his or her authorized agent or representative, at any reasonable time and place, either within or without this state, upon proper demand.

(h)(1) If a person who has not obtained an alternative fuels license from this state, and who is nevertheless determined an alternative fuels user, leaves the State of Arkansas by a state highway or other road not equipped with a permanent port of entry or exit and has not paid the alternative fuels tax or has not purchased tax-paid alternative fuels from a licensed alternative fuels supplier in an amount equal to the number of equivalent gallons used upon the highways of the State of Arkansas, the person shall be liable for the payment of the tax due as determined above together with the penalties as set out in § 26-62-105.

(2) If an unlicensed alternative fuels user is within one (1) mile of the state line on the way out of the state and does not have in his or her possession a form issued by a licensed alternative fuels supplier showing the number of equivalent gallons purchased equal to the amount used in traveling upon the highways of the State of Arkansas, it shall be prima facie evidence of his or her failure to comply with the requirements of this chapter, and he or she shall be liable for the payment of the tax due, plus the fine as set out in § 26-62-106.

(3) In the event an unlicensed alternative fuels user enters the State of Arkansas via a state highway not equipped with a permanent port of entry, and the driver of the vehicle does not receive an entry form, then the burden of proof of the point of entry and time of entry for the purpose of determining the miles traveled and the tax due shall be upon the driver or owner of the vehicle.

History. Acts 1993, No. 1119, § 19;
1995, No. 1296, § 89.

26-62-212. Power to stop, investigate, and impound vehicles — Assessment of tax.

(a) In order to enforce the provisions of this chapter, the Director of the Department of Finance and Administration or his or her authorized representative is empowered to stop any motor vehicle which appears to be operating with alternative fuels for the purpose of examining the invoices or other documents required by this chapter, or by regulation, and for such other investigative purposes reasonably necessary to determine whether the taxes imposed by this chapter have been paid or whether the vehicle is being operated in compliance with the provisions of this chapter.

(b) If after examination or investigation it is determined by the director or his or her authorized representative that the tax imposed by this chapter has not been paid with respect to the alternative fuels being used in the vehicle, the director or his or her representative shall immediately assess the tax due, together with the penalty hereinafter provided, to the owner of the vehicle and give the owner written notice of the assessment by handing it to the driver of the vehicle.

(c) The director or his or her representative is empowered to impound any vehicle found to be operating in violation of this chapter by a person other than a person who has furnished the bond required of users by § 26-62-204 until such time as any tax assessed as provided herein has been paid.

History. Acts 1993, No. 1119, § 20.

26-62-213. Unlawful activities regarding operation of motor vehicles.

(a) It is unlawful and a violation of this chapter to operate with alternative fuels any motor vehicle licensed for highway operation on

which an odometer or hub meter is not kept at all times in good operating condition to correctly measure and register the miles traveled by the motor vehicle.

(b) It shall be unlawful for any person to operate with alternative fuels any vehicle of Arkansas domestic registry unless he or she has in his or her possession an invoice, if required, for the alternative fuels and the invoice meets the requirements of § 26-62-207, or, if the user has purchased such alternative fuels pursuant to § 26-62-203, he or she has in his or her possession the required documents mandated by the provisions of § 26-62-207(e).

(c)(1) In addition to any other penalties which may be incurred, there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the Director of the Department of Finance and Administration or his or her representative and shall be collected in the same manner as is provided for the collection of tax in § 26-62-212.

History. Acts 1993, No. 1119, § 21.

26-62-214. Conversion of vehicles for use of alternative fuels.

(a) Any alternative fuels supplier, garage, mechanic, owner, or operator of a motor vehicle who converts or causes a vehicle to be converted to enable the vehicle to be operated on any type of alternative fuels shall report the conversion to the Director of the Department of Finance and Administration on forms prescribed by the director, which shall include, but not be limited to, the model, make, license number, and vehicle identification number of the converted vehicle within ten (10) days after the conversion.

(b) The converting or equipping of a vehicle for natural gas propulsion shall be in compliance with rules and regulations to be made and promulgated by the director.

(c)(1) It shall be unlawful for any person to operate any motor vehicle which has been converted or equipped to use alternative fuels unless the vehicle has been reported to the director and any permit, if required by this chapter of that person, has been obtained.

(2) If any owner or operator fails to report a conversion of a vehicle to the director within the time prescribed above, such person shall be assessed a penalty of two hundred fifty dollars (\$250) which shall be in addition to any criminal penalty in this chapter.

History. Acts 1993, No. 1119, § 22.

CHAPTER 63

ARKANSAS SPECIAL EXCISE TAXES

SUBCHAPTER

1. GENERAL PROVISIONS.

SUBCHAPTER

- 2. REGISTRATION — DISCOUNT — EXEMPTION — PROCEDURES.
- 3. RENTAL TAXES.
- 4. TOURISM TAX.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-63-101. Title.
- 26-63-102. Definitions.
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- chapter — Distribution of surplus annually.
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Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.
Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-101. Title.

This chapter shall be known and may be cited as “Arkansas Special Excise Taxes”.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-102. Definitions.

As used in this chapter:

- (1) “Consumer” means a person to which the taxable sale is made or to which a taxable service is furnished;
- (2) “Director” means the Director of the Department of Finance and Administration or any of his or her authorized agents;
- (3) “Engage in business” means any local activity regularly and persistently pursued by any seller or vendor through agents, employees, or representatives with the object of gain, profit, or advantage and that results in a sale, delivery, or the transfer of the physical position of any tangible personal property by the vendor to the vendee at or from any point within Arkansas, whether from warehouse, store, office, storage point, rolling store, motor vehicle, delivery conveyance, or by any method or device under the control of the seller effecting such a local delivery without regard to the terms of sale with respect to point of acceptance of the order, point of payment, or any other condition;
- (4)(A) “Gross receipts” or “gross proceeds” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or a taxable service is sold, leased,

or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller's cost of the tangible personal property sold;
- (ii) The cost of materials used, labor or service cost, interest, any loss, any cost of transportation to the seller, any tax imposed on the seller, or any other expense of the seller;
- (iii) Any charge by the seller for any service necessary to complete the sale;
- (iv) Delivery charge;
- (v)(a) Installation charge.

(b) However, an installation charge will not be included in the "gross receipts" or "gross proceeds" if it is not a specifically taxable service under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the installation charge has been separately stated on the invoice, billing, or similar document given to the purchaser;

(vi) The value of exempt tangible personal property given to the purchaser if taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for any trade-in.

(B) "Gross receipts" or "gross proceeds" does not include:

(i) A discount, including cash, term, or a coupon that is not reimbursed by a third party and that is allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, or a carrying charge from credit extended on the sale of tangible personal property or a taxable service, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(iii) Any tax legally imposed directly on the consumer that is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(5)(A)(i) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

(ii) A lease or rental may include future options to purchase or extend.

(B) "Lease" or "rental" does not include:

(i) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments;

(iii)(a) Providing tangible personal property along with an operator for a fixed or indeterminate period of time.

(b) A condition of this exclusion in this subdivision (5)(B)(iii) is that the operator is necessary for the equipment to perform as designed.

(c) For the purpose of this subdivision (5)(B)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property; or

(iv) An agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(2), as in effect on January 1, 2007.

(C) This definition of "lease" or "rental" in this subdivision (5) shall:

(i) Be used for excise tax purposes under this chapter regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code of 1986, as in effect on January 1, 2007, the Uniform Commercial Code, § 4-1-101 et seq., or another provision of federal, state, or local law;

(ii) Be applied only prospectively from January 1, 2008, and shall have no retroactive impact on existing leases or rentals; and

(iii) Impact neither any existing sale-leaseback exemption nor exclusion;

(6) "Long-term rental" means a lease of thirty (30) days or more to a single consumer;

(7) "Motor vehicle" means a vehicle that is self-propelled and is required to be registered for use on the highway;

(8) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity;

(9)(A) "Sale" means the transfer of either the title or possession, except in the case of a lease or rental for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) "Sale" includes the:

(i) Exchange, barter, lease, or rental of tangible personal property; or

(ii) Sale, giving away, exchanging, or other disposition of admissions, dues, or fees to clubs, to places of amusement, to recreational or athletic events, or for the privilege of having access to or the use of amusement, athletic, or entertainment facilities.

(C) "Sale" does not include the:

(i) Furnishing or rendering of a service except as otherwise provided in this section; or

(ii) Transfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.

(D)(i) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for less than thirty (30) days, any tax levied by this chapter shall be paid on the basis of rental or

lease payments made to the lessor of the tangible personal property during the term of the lease or rental regardless of whether Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property.

(ii) In the case of a lease or rental of tangible personal property, including motor vehicles and trailers for thirty (30) days or more, the tax shall be paid on the basis of rental or lease payments made to the lessor of the tangible personal property during the term of the lease or rental unless Arkansas gross receipts tax or compensating use tax was paid by the lessor at the time of the purchase of the tangible personal property;

(10) "Short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days to a single consumer;

(11) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses; and

(12) "Taxpayer" means any person liable to remit a tax levied by this chapter or to make a report for the purpose of claiming any exemption from payment of a tax levied by this chapter.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-103. Tax additional to other taxes.

The tax levied by this chapter shall be in addition to any other tax except as otherwise provided in this chapter.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-104. Administration — Rules and regulations.

(a) The Director of the Department of Finance and Administration shall administer this chapter.

(b) The director shall prescribe forms and promulgate rules for the proper enforcement of this chapter, including without limitation the manner and time the taxes levied by this chapter shall be collected, reported, and paid and how a sale will be sourced.

(c) Except as otherwise provided in this chapter, any law, rule, or regulation relating to the administration, enforcement, or collection of a tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., applies to this chapter if it is applicable.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-105. Cost of administration of chapter — Distribution of surplus annually.

(a) The administration cost of this chapter shall not exceed three percent (3%) of the actual revenues collected under this chapter.

(b) If any funds appropriated for the administration of this chapter remain in the possession of the Director of the Department of Finance and Administration at the end of each fiscal year that have not been actually used in the administration of this chapter, then the funds shall be remitted by the director to the Treasurer of State for distribution in the same manner and for the same purposes provided for in § 26-63-106.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-106. Disposition of taxes, interest, and penalties.

(a) Except as otherwise provided in this chapter, all taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under this chapter are general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the general revenues described in subsection (a) of this section to the various State Treasury funds participating in general revenues in the respective proportions to those funds as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-107. Changes in law — Notice.

The Director of the Department of Finance and Administration shall give each special excise tax registrant under § 26-63-201 written notice of any change in the state law pertaining to the taxes levied by this chapter within thirty (30) days after the adjournment of the General Assembly.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

**SUBCHAPTER 2 — REGISTRATION — DISCOUNT — EXEMPTION —
PROCEDURES**

SECTION.

26-63-201. Registration required.

SECTION.

26-63-202. Discount for prompt payment.

SECTION.

26-63-203. Exemptions generally.
26-63-204. Discontinuance of business —
Unpaid taxes.

SECTION.

26-63-205. Applicability of tax procedure
provisions.

Cross References. Arkansas Tourism
Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one
mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-201. Registration required.

(a) It is unlawful for any taxpayer to transact business within this state prior to registering with the Director of the Department of Finance and Administration.

(b) The director may promulgate rules to implement this section.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-202. Discount for prompt payment.

A taxpayer filing a report for a tax due under this chapter is eligible for the discount for prompt payment pursuant to § 26-52-503.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-203. Exemptions generally.

With the exception of the tourism tax levied in § 26-63-401 et seq., a tax levied by this chapter is exempted from taxation in the same manner as the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-204. Discontinuance of business — Unpaid taxes.

(a)(1) Upon discontinuance of a business by sale or otherwise, any taxpayer registered to operate under this chapter shall notify the Director of the Department of Finance and Administration in writing and remit any unpaid or accrued taxes due under this chapter.

(2) Failure to pay any unpaid or accrued taxes due under this chapter is sufficient cause for the director to refuse to allow the taxpayer to engage in or transact any other business in this state.

(3) In the case of a sale of any business, the tax levied by this chapter is due at the time of the sale of the fixtures and equipment incident to the business, and any tax due under this chapter constitutes a lien against the stock and the fixtures and equipment in the possession of the purchaser of the fixtures and equipment or any other third party until the tax due under this chapter is paid.

(b) The director shall not register a taxpayer to continue to conduct a business until all tax due under this chapter has been settled and paid.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-205. Applicability of tax procedure provisions.

Any proceeding related to the registration, collection, reporting, or payment under this chapter is governed by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

SUBCHAPTER 3 — RENTAL TAXES

SECTION.

26-63-301. Short-term rentals of tangible
personal property.
26-63-302. Rental vehicle tax.

SECTION.

26-63-303. Residential moving tax.
26-63-304. Long-term rental vehicle tax.

Cross References. Arkansas Tourism
Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one
mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-301. Short-term rentals of tangible personal property.

(a) As used in this section:

(1) "Motor vehicle" means any vehicle required to be licensed for highway use under Arkansas law; and

(2) "Short-term rental" means a rental or lease of tangible personal property for a period of less than thirty (30) days, except rentals or leases of motor vehicles, trailers, or farm machinery and equipment.

(b)(1) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a short-term rental tax of one percent (1%)

on the gross receipts received from the short-term rental of tangible personal property.

(2) The tax levied by this section is applicable to a short-term rental regardless of whether the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was paid on the rented tangible personal property at the time of purchase.

(c) The tax levied by this section does not apply to the lease or rental of:

(1) A diesel truck leased or rented for commercial shipping; and

(2) Farm machinery or farm equipment leased or rented for a commercial purpose.

(d) The tax levied by this section does not apply to a short-term rental of tangible personal property that is subject to the tourism tax levied in § 26-63-401 et seq.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-302. Rental vehicle tax.

(a)(1)(A) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a rental vehicle tax.

(B) The rental vehicle tax is levied on the gross receipts or gross proceeds derived from the rental of a motor vehicle required to be licensed that is leased for a period of less than thirty (30) days.

(C) The gross receipts or gross proceeds derived from a rental described in subdivision (a)(1)(B) of this section is taxable whether or not the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was paid at the time of registration.

(2) The gross receipts or gross proceeds derived from the sale of a motor vehicle to a person engaged in the business of renting a motor vehicle required to be licensed is exempt from taxation under the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any municipal or county sales taxes if the motor vehicle is used exclusively for the purpose of rentals for periods of less than thirty (30) days.

(b)(1) In addition to the rate in subsection (c) of this section, the rental vehicle tax is levied at the rate of five percent (5%) and the rate of any applicable municipal or county taxes.

(2) Except as provided otherwise in this section, the rental vehicle tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter.

(3)(A) The rental vehicle tax shall be remitted to the Director of the Department of Finance and Administration and, except for the amount equal to any municipal or county taxes, shall be deposited into the State Treasury as general revenues.

(B) The amount of the rental vehicle tax which is based on the municipal and county sales taxes shall be remitted to the city or county in the same manner as for municipal and county sales taxes.

(c)(1) There is also imposed an additional rental vehicle tax at the rate of five percent (5%) on the gross receipts or gross proceeds derived from the rental of a motor vehicle required to be licensed that is leased for a period of less than thirty (30) days.

(2)(A)(i) The additional rental vehicle tax shall be remitted to the director, who shall deposit seventy-five percent (75%) of the net revenues derived from the additional rental vehicle tax into the Arkansas Public Transit Trust Fund.

(ii) The moneys in the fund resulting from a deposit described in subdivision (c)(2)(A)(i) of this section shall be used by the Arkansas State Highway and Transportation Department for the purpose of acquiring federal matching funds for the purchase of public transportation vehicles, for public transit equipment or facilities, and for the operation of the United States Department of Transportation Federal Transit Administration assistance programs.

(B) The remaining twenty-five percent (25%) of the revenues shall be deposited into the Department of Education Public School Fund Account to be used exclusively for teacher salaries.

(d) Both the rental vehicle tax and the additional rental vehicle tax levied by this section do not apply to the lease or rental of:

(1) A diesel truck leased or rented for commercial shipping;

(2) Farm machinery or farm equipment leased or rented for a commercial purpose; and

(3) A gasoline-powered or diesel-powered truck leased or rented for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-303. Residential moving tax.

In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a residential moving tax at the rate of four and five-tenths percent (4.5%) on the gross receipts received from:

(1) The short-term rental of a gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping; and

(2) Any tangible personal property sold in conjunction with the rental or lease of a gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-304. Long-term rental vehicle tax.

(a)(1) In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a long-term rental vehicle tax at the rate of one and five-tenths percent (1.5%) on the gross receipts or gross proceeds derived from a rental of a motor vehicle required to be licensed and that is leased for a period of thirty (30) days or more.

(2) The gross receipts or gross proceeds derived from the rental described in subdivision (a)(1) of this section is taxable only if the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., was not paid at the time of registration.

(b) If the Chief Fiscal Officer of the State certifies that ten percent (10%) or more of all new motor vehicles registered in Arkansas during a calendar year are leased vehicles based on information and statistics from a reliable source, such as R.L. Polk & Co., then the long-term rental vehicle tax shall expire on June 30 of the fiscal year following the calendar year for which the certification is made.

(c) The long-term rental vehicle tax shall be remitted to the Director of the Department of Finance and Administration and shall be deposited into the State Treasury as general revenues.

(d) The long-term rental vehicle tax does not apply to:

- (1) A diesel truck rented or leased for commercial shipping;
- (2) Farm machinery or farm equipment rented or leased for a commercial purpose; or
- (3) A gasoline-powered or diesel-powered truck rented or leased for residential moving or shipping.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

SUBCHAPTER 4 — TOURISM TAX

SECTION.

26-63-401. Definitions.

26-63-402. Tourism tax.

26-63-403. Applicability — Political subdivisions — Churches and charitable organizations.

SECTION.

26-63-404. Exemptions.

26-63-405. Tourism Development Trust Fund.

Cross References. Arkansas Tourism Development Act, § 15-11-501 et seq.

Tax levy in cities adjacent to city one mile from state line, § 26-25-104.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-401. Definitions.

As used in this subchapter:

(1) "Camping fee" means a fee for furnishing a camping space or trailer space on less than a month-to-month basis;

(2) "Special event" means any attraction, festival, or other event of not more than fourteen (14) days' duration;

(3)(A) "Tourist attraction" means a theme park, a water park, a water slide, a river boat or lake boat cruise or excursion, a local sightseeing or excursion tour, a helicopter tour, an excursion railroad, a carriage ride, horse racing, dog racing, car racing, an indoor or outdoor play or music show, folk center, observation tower, a privately owned or operated museum, a privately owned historic site or building, or a natural formation such as a spring, bridge, rock formation, cave, or cavern.

(B) "Tourist attraction" does not include:

(i) A special event;

(ii) An event of a school, college, or university; or

(iii) An event of a restaurant, coffee shop, dinner theater which admits dinner guests only, cafe, cafeteria, or any other public eating establishment that is open for business every month of the year; and

(4)(A) "Watercraft" means a boat, canoe, kayak, sailboat, party barge, raft, jet ski, houseboat, or amphibious vehicle.

(B) "Watercraft" does not include a tug boat or barge.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-402. Tourism tax.

In addition to the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., there is levied a tourism tax at the rate of two percent (2%) on the gross proceeds or gross receipts derived from the following:

(1)(A) The service of furnishing a:

(i) Condominium, townhouse, or rental house to a transient guest; and

(ii) Guest room, suite, or other accommodation by a hotel, motel, lodging house, tourist camp, tourist court, property management company, or any other provider of an accommodation to a transient guest.

- (B) As used in this subdivision (1), “transient guest” means a person that rents an accommodation, other than the person’s regular place of abode, on less than a month-to-month basis;
- (2) A camping fee at a public or privately owned campground, except at a federal campground;
- (3) The following items offered for rent by a boat dock, marina, canoe or raft rental business, or other business engaged in the rental of watercraft:
- (A) Watercraft;
 - (B) Boat motor and related boat motor equipment;
 - (C) Life jacket or cushion;
 - (D) Water skis; or
 - (E) Oar or paddle; and
- (4) The admission price to a tourist attraction.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-403. Applicability — Political subdivisions — Churches and charitable organizations.

(a) The gross receipts or gross proceeds derived from the rental or sale of tangible personal property or a taxable service subject to the tourism tax levied by this subchapter by the State of Arkansas, any county, any municipality, or any other political subdivision of the state are not exempt from the tax.

(b)(1) The gross receipts or gross proceeds derived by a church or charitable organization from the admission price to a tourist attraction shall not be exempt from the tax levied by this subchapter.

(2) However, the gross receipts or gross proceeds derived from the sale or rental of other tangible personal property or a taxable service by a church or charitable organization shall be exempt from the tourism tax imposed by this subchapter, except when the organization is engaged in business for a profit.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-63-404. Exemptions.

There is exempted from the tourism tax levied by this subchapter the following:

(1) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Boy Scouts of America, chartered by the United States Congress in 1916, or the Girl Scouts of the United States of America, chartered by the United States Congress in 1950, or any of the scout councils in this state;

(2) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Boys Clubs of America, chartered by the United States Congress in 1956, or any local councils or organizations of the Boys Clubs of America;

(3) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to the Girls Clubs of America or any local council or organization of the Girls Clubs of America; or

(4) Gross receipts or gross proceeds derived from the sale or rental of tangible personal property or taxable services to 4-H Clubs and FFA Clubs in this state, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation, and the Arkansas Future Farmers of America Association.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-63-405. Tourism Development Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Tourism Development Trust Fund".

(b) The revenues derived from the tourism tax levied by this subchapter shall be remitted to the Treasurer of State who shall deposit the revenues into the State Treasury as special revenues and shall credit the revenues to the fund.

(c) All revenues collected under this subchapter and credited to the fund shall be used by the Department of Parks and Tourism exclusively for the promotion of tourism in Arkansas.

History. Acts 2007, No. 182, § 1.

Effective Dates. Acts 2007, No. 182,

Cross References. Tourism Development Trust Fund, § 19-5-956. § 32: Jan. 1, 2008.

CHAPTERS 64-71

[Reserved]

SUBTITLE 6. LOCAL TAXES

CHAPTER 72

GENERAL PROVISIONS

[Reserved]

CHAPTER 73

TAXATION GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. MUNICIPAL CORPORATIONS.
3. COUNTIES.

Effective Dates. Acts 1994 (1st Ex. Sess.), Nos. 6 and 7, § 10: Mar. 4, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the decision of the Arkansas Court of Appeals in *AT&T Communications of the Southwest, Inc. v. City of Little Rock* [44 Ark. App. 30, 866 S.W.2d 414 (1993)] has created uncertainty and confusion concerning the ability of municipalities to assess franchise fees as a term or condition for the use of

public rights-of-way; that the immediate implementation of this Act is necessary to eliminate this uncertainty and confusion and to reconfirm the authority of municipalities to levy franchise fees. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

A.L.R. Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

Exemption of nonprofit theater or concert hall from local property taxation. 42 A.L.R.4th 614.

Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-73-101. Savings provision.
- 26-73-102. Definitions.
- 26-73-103. Levy of new taxes permitted — Exceptions.
- 26-73-104. Levy of income and other taxes.
- 26-73-105. Collection of taxes.
- 26-73-106. Funds created.
- 26-73-107. Rules and regulations.
- 26-73-108. Discrimination in use of tax funds prohibited.
- 26-73-109. Tax information exchange agreements.

SECTION.

- 26-73-110. Special local sales and use tax — Levying ordinance.
- 26-73-111. Special local sales and use tax — Election.
- 26-73-112. Special local sales and use tax — Additional tax — Levy collection and enforcement — Proceeds.
- 26-73-113. Alternative local sales and use tax.
- 26-73-114. Dedication of sales and use tax to school district.
- 26-73-115. Sales and use tax reports.

A.C.R.C. Notes. References to "this subchapter" in §§ 26-73-101 — 26-73-113

may not apply to §§ 26-73-114 and 26-73-115 which was enacted subsequently.

Cross References. Taxing power of quorum court, limitations, § 14-14-806.

Effective Dates. Acts 1977, No. 942, § 12: Apr. 1, 1977. Emergency clause provided: "It is hereby found that providing local taxing powers to county and city governments is essential to the well-being of the populace of the State of Arkansas and is necessary to provide the ability to raise local revenues for local projects and services; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 200, § 6: Feb. 20, 1991. Emergency clause provided: "It has been found, and is hereby declared by the General Assembly of the State of Arkansas, that certain counties and municipalities within the State of Arkansas, as a result of foreseen elimination of federal funds heretofore made available to them and used for a variety of vital public purposes, will not be able to and cannot provide the funds necessary to provide such vital public service and purpose to their inhabitants without additional funding authority from the State of Arkansas; that the most appropriate way for such counties or municipalities to provide funds for this purpose is by the levy of a sales and use tax on the gross receipts derived from certain businesses within the counties and municipalities, and that this Act is needed and should be given effect at the earliest possible date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 777, § 6: Mar. 26, 1991. Emergency clause provided: "It is hereby determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to maintain and finance capital improvements of a public nature and to provide services to their inhabitants; that under current law the cities and counties are restricted to a one percent (1%) sales and use tax levy; that the ability to levy a sales and use tax computed on any fraction of one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and

that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 40, § 5: Mar. 11, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing taxing authority for counties to fund vital county services is inadequate; and that this act will provide authority for the counties to raise additional revenues to provide for vital county services for the residents of the county. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 947, § 5: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing taxing authority for counties to fund vital county services is inadequate; and that this act will provide authority for the counties to raise additional revenues to provide for vital county services for the residents of the county by renting capital improvements. Therefore, an emergency is declared to exist and this act being immediately necessary for the

preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during

which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

26-73-101. Savings provision.

Nothing in this subchapter shall be construed to modify or repeal §§ 26-75-303 and 26-75-307 — 26-75-316.

History. Acts 1977, No. 942, § 10; A.S.A. 1947, § 17-2009.

26-73-102. Definitions.

As used in this subchapter:

(1) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(2) "County" means each of the counties of this state;

(3) "Director" means the Director of the Department of Finance and Administration in the exercise of those powers, functions, and duties formerly vested in the Commissioner of Revenues of the State of Arkansas which were merged into the Department of Finance and Administration under the provisions of § 25-8-101 et seq., or any of his or her authorized agents;

(4) "Local government" means a city or county; and

(5) "Municipality" and "city" mean any city of the first class, city of the second class, or incorporated town in this state.

History. Acts 1977, No. 942, § 2; A.S.A. 1947, § 17-2001; Acts 1995, No. 565, § 14.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

26-73-103. Levy of new taxes permitted — Exceptions.

(a)(1) In addition to all other authority of local governments to levy taxes provided by law, any county acting through its quorum court or any municipality acting through its governing body may levy any tax not otherwise prohibited by law.

(2) However, no ordinance levying an income tax authorized by this subchapter or any other tax not authorized shall be valid until adopted at a special or general election by the qualified electors of the city or in

the area of the county where the tax is to be imposed, as the case may be.

(b) A local government shall not levy a tax on fuel, tobacco, or alcoholic beverages except as authorized by law.

(c)(1) The provisions of this subchapter shall not apply to lands, buildings, facilities, and equipment, also known as licensed facilities, located in this state used by a franchise holder at any time for licensed horse or dog racing in this state nor to any income of the franchise holder derived from the use of such licensed facilities from every source whatever except the sale of food and beverages at such licensed facilities.

(2) Nor shall this subchapter apply to any moneys derived by the franchise holder from pari-mutuel wagering at such licensed facilities, but this provision shall not exempt a franchise holder from a general income tax levied against all taxpayers in the taxing county or municipality.

(d) Nothing in this subchapter shall be construed to diminish the existing powers of county governments or city governments.

(e) Any taxes proposed by ordinance at the quorum court of the county shall be designed to benefit not only the county but also the municipalities located wholly or partially within the county.

(f) Nothing in this subchapter shall terminate, repeal, or otherwise affect a gross receipts tax on the receipts derived from hotels, motels, and restaurants located within any city levied under the provisions of § 26-75-601 et seq.

(g) Until otherwise authorized by the General Assembly, cities and counties shall have no authority to levy any new sales or use taxes after April 1, 1977.

(h) Nothing in this subchapter shall limit the authority of municipalities to assess or contract for franchise fees pursuant to §§ 14-54-704 and 14-200-101 or any other enabling legislation related to franchise fees.

History. Acts 1977, No. 942, § 3; A.S.A. 1947, § 17-2002; Acts 1994 (1st Ex. Sess.), No. 6, § 4; 1994 (1st Ex. Sess.), No. 7, § 4.

Publisher's Notes. Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 1, provided: "LEGISLATIVE FINDINGS. (a) In the State of Arkansas, municipalities are granted jurisdiction and authority over the use and control of the public rights-of-way within the corporate limits of the municipality, to the extent that such jurisdiction does not conflict with state or federal statutes or regulations.

"(b) This historic authority has included the right to assess franchise fees for the privilege of the use of such rights-of-way and of providing utility service to the public.

"(c) On numerous occasions, the courts of the State of Arkansas have referred to this right to assess franchise fees against public utilities. For example, in *Hot Springs Electric Light Co. v. Hot Springs*, 70 Ark. 300 (1902), the Arkansas Supreme Court expressly stated that cities may assess a franchise fee as a condition for the use of public rights-of-way."

Identical Acts 1994 (1st Ex. Sess.) Nos. 6 and 7, § 2, provided: "STATEMENT OF POLICY. It is, and historically has been, the policy of the State of Arkansas to permit municipalities, as one means of raising revenues, to assess municipal franchise fees against public utilities for the privilege of providing utility services to the public and of using public rights-of-

way, including streets, highways, or other public places of any kind whatsoever within municipal boundaries and such franchise fees have not been considered to be within the scope of A.C.A. § 26-73-103 so as to require a vote of the electorate.

"It is also the policy of the State that nothing in this Act shall amend or ad-

versely impact the terms and provisions of an existing franchise agreement between a municipality and a public utility entered into pursuant to A.C.A. § 14-54-704, A.C.A. § 14-200-101, or any other enabling legislation relating to franchise fees in effect at the time of the agreement."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

Goldner, A Call for Reform of Arkansas Municipal Law, 15 U. Ark. Little Rock L.J. 175.

CASE NOTES

ANALYSIS

Approval of Voters.

Fees.

Illegal Exactions.

Utility Expansion Capital.

Approval of Voters.

Because voters did not approve the surcharge, it constituted an illegal tax. *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

Fees.

A series of ordinances that placed "tapping fees" on builders or lot owners connecting onto city's existing water and sewer systems and required "access fees" from any person or entity connecting to city's transmission lines, placing the funds collected from these respective fees in separate accounts designed as the "water expansion account" and "sewer expansion account" and used solely to expand the city's water and sewer systems, were valid because they assessed fees and not taxes. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The distinction between a tax and a fee is that government imposes a tax for general revenue purposes, but a fee is imposed in the government's exercise of its police powers. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The court, in determining whether a governmental charge, assessment or fee is a tax, is not bound by how the enactment or levy labels it. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

The holding in *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993), is

simply inapplicable to situations where cities are statutorily authorized to assess public utilities franchise fees for the use or occupancy of the cities' rights-of-way. *City of Little Rock v. AT&T Communications*, 318 Ark. 616, 888 S.W.2d 290 (1994).

Illegal Exactions.

Charge that was imposed by ordinance and used to pay for a salary increase for city policemen and firemen was a payment exacted by the municipality as a contribution toward the cost of maintaining the traditional governmental functions of police and fire protection and was not for a specific, special service, but was a means of raising revenue to pay additional money for services already in effect; therefore, the charge was a tax and not a fee, and the ordinance imposing it, which was never voted on by the electors as required by this section, was void as an illegal exaction. *North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983).

City ordinance imposing charge for police and fire protection and street lighting was not a property tax within the meaning of Ark. Const., Art. 12, § 4 or §§ 26-25-102 and 26-25-103, where ordinance placed tax on the "resident" or "occupant" of the property as opposed to a tax on the "residence" or upon the "real property," and such tax was not otherwise prohibited by subsection (a) of this section. *Holt v. City of Maumelle*, 302 Ark. 51, 786 S.W.2d 581 (1990).

Utility Expansion Capital.

Raising expansion capital to pay for the extension of existing water and sewer systems to developments where new users

reside by setting connection charges, which do not exceed a pro rata share of reasonably anticipated costs of expansion, is permissible where expansion is reason-

ably required if the use of the money is limited to meeting the cost of that extension. *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993).

26-73-104. Levy of income and other taxes.

(a)(1) A local government may levy a tax upon the income of its individual residents and corporations and individuals owning a business within the boundaries of the local government levying the tax, but no tax shall be levied on the income of corporations or other business entities in any local governmental unit unless a like tax is levied on the income of individual residents of such governmental unit.

(2) However, in the event a municipality levies an income tax or other tax authorized by this subchapter, with the exception of the sales and use tax, the county within which such municipality is located may not levy or collect that tax being levied by the municipality within the corporate limits of such municipality.

(b)(1) For individual taxpayers, the rate of tax on income authorized by this section shall be a single percentage of the income tax payable to the State of Arkansas.

(2)(A) For all domestic or foreign corporations, the rate of tax on income authorized by this section shall be a percentage of the income tax payable to the State of Arkansas, calculated on an apportionment formula which shall consist of a fraction, the numerator of which is the property factor, plus the payroll factor, plus the sales factor and the denominator of which is three (3).

(B) The sales factor is a fraction, the numerator of which is the total sales of the corporation within the local government during the tax period and the denominator of which is the total sales of the corporation within the state for the same tax period.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid in the local government during the tax period by the corporation for compensation and the denominator of which is the total compensation paid within the state for the same tax period.

(D) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in the local government during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used within the state during the same tax period.

(c) However, a corporation located within the boundaries of a local government and subject to the tax under this section, having no sales, payroll, and property in another local government, shall be permitted the election of being taxed in the same manner as an individual taxpayer under this section.

26-73-105. Collection of taxes.

(a) The Director of the Department of Finance and Administration shall collect the tax levied under this subchapter and shall perform all functions incident to the administration, collection, enforcement, and operation of the taxes in the manner and following the procedures that are prescribed for the corresponding state taxes.

(b) The director shall deduct from all revenues collected pursuant to this subchapter up to three percent (3%) as a cost of collection.

History. Acts 1977, No. 942, §§ 5, 8; A.S.A. 1947, §§ 17-2004, 17-2007; Acts 2007, No. 181, § 40.

Amendments. The 2007 amendment rewrote (a).

Effective Dates. Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

26-73-106. Funds created.

(a) There are created on the books of the Treasurer of State, the Auditor of State, and the Director of the Department of Finance and Administration a Revenue Local Tax Revolving Fund and a Revenue Local Tax Operating Fund.

(b) All taxes collected by the director shall be deposited into the State Treasury and credited to the Revenue Local Tax Revolving Fund and transmitted at least quarterly in each state fiscal year to the local government levying the tax.

History. Acts 1977, No. 942, § 6; A.S.A. 1947, § 17-2005.

26-73-107. Rules and regulations.

The Director of the Department of Finance and Administration shall promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1977, No. 942, § 8; A.S.A. 1947, § 17-2007.

26-73-108. Discrimination in use of tax funds prohibited.

(a)(1) No citizen in the State of Arkansas in a county, city, or local community on the grounds of race, color, religion, or national origin shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination of services or participation under any program or activity receiving Arkansas tax funds.

(2) Each county, city, local community, or agency within the State of Arkansas which is empowered to extend financial assistance to any program or activity, by the way of Arkansas state, county, or city tax funds shall not engage in any practice of discrimination in participation, employment, services, or in any other human involvement.

(b) Violation of this section shall result in the impoundment of the state, county, or city tax funds so allotted.

History. Acts 1977, No. 942, § 7; A.S.A. 1947, § 17-2006.

26-73-109. Tax information exchange agreements.

(a)(1)(A) In order to promote the expeditious and effective collection of any tax levied under authority of this subchapter, a local government may enter into exchange of tax information agreements with the:

- (i) Internal Revenue Service,
- (ii) Director of the Department of Finance and Administration; or
- (iii) Tax administrator of another state or political subdivision.

(B) Any such information exchanged shall be utilized solely for the purpose of enforcing tax laws.

(2) In all other matters concerning the release of tax information, including its release to law enforcement agencies, the local government shall be governed by state law in the same manner as is the director.

(b) Any person who sells or unlawfully divulges to another person or organization any information acquired through the collection of a tax levied under authority of this subchapter is guilty of a Class A misdemeanor and subject to the penalties therefor as defined in the Arkansas Criminal Code.

History. Acts 1977, No. 942, § 9; A.S.A. 1947, § 17-2008.

Meaning of “Arkansas Criminal Code”. See note to § 5-1-101.

26-73-110. Special local sales and use tax — Levying ordinance.

(a) Any county, city of the first class, city of the second class, or incorporated town may adopt an ordinance levying a special local sales or use tax for the use of such county or city or town in an amount not to exceed one-fourth of one percent (.25%), except that no city or town shall levy the tax herein authorized unless and until the quorum court of the county wherein said city or town is situated fails to pass an ordinance levying said tax on a county-wide basis or the county levying ordinance is defeated by the voters in a county-wide election.

(b) The ordinance levying a tax herein authorized shall identify and set forth the purpose for which the levy is made.

History. Acts 1991, No. 200, §§ 1, 2.

26-73-111. Special local sales and use tax — Election.

(a) On the date of the adoption of an ordinance levying a special local sales and use tax for the benefit of a county, city, or town, the county, city, or town by ordinance shall provide for calling and holding a special election on the question.

(b) The special election shall be in accordance with § 7-5-103(b) and conducted in the manner provided by law for all county or municipal elections unless otherwise specified in this section.

(c) The special election shall be called for a date not later than one hundred twenty (120) days from the date of the action of the governing body in establishing the date of the special election.

(d)(1) The governing body of the county or municipality shall notify the county board of election commissioners that the measure has been referred to a vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(2) The ballot title to be used at the special election shall be substantially in the following form:

"[] FOR adoption of a one-fourth of one percent (.25%) special local sales and use tax within (name of county or municipality) for support of a Public Mass Transportation System and Facilities."

"[] AGAINST adoption of a one-fourth of one percent (.25%) special local sales and use tax within (name of county or municipality) for support of a Public Mass Transportation System and Facilities."

History. Acts 1991, No. 200, § 1; 2005, No. 2145, § 67; 2007, No. 1049, § 89.

Amendments. The 2005 amendment rewrote (c).

The 2007 amendment inserted "in accordance with § 7-5-103(b) and" in (b); and rewrote (c).

26-73-112. Special local sales and use tax — Additional tax — Levy collection and enforcement — Proceeds.

(a) The tax authorized by this section and §§ 26-73-110 and 26-73-111 shall be in addition to all other sales and use taxes now or hereafter authorized for counties, cities of the first class, cities of the second class, and incorporated towns.

(b) With the exception of the purpose for which the tax herein authorized may be used, all provisions of § 26-75-201 et seq., being enabling legislation for cities and incorporated towns to levy and collect local sales and use taxes, and §§ 26-74-201 et seq. and 26-74-301 et seq., being enabling legislation for counties to levy and collect local sales and use tax, shall be applicable and controlling in the levy, election, administration, collection, and enforcement of the tax herein authorized, except that the proceeds of a levy made by a county pursuant to this section and §§ 26-73-110 and 26-73-111 shall not be distributed on a per capita basis as provided for by § 26-74-201 et seq. and § 26-74-301 et seq., but shall be remitted and transmitted to the county treasurer and used for the purposes and in the percentage amounts as provided for and set forth in the levying ordinance.

(c) The proceeds of the tax herein authorized shall be used only to provide the following public service and purpose by a county, a city of the first or second class, or incorporated town: Public mass transportation systems and facilities.

History. Acts 1991, No. 200, § 2.

26-73-113. Alternative local sales and use tax.

(a)(1)(A) In lieu of using all or a portion of its authority to levy a sales and use tax solely to pay bonded debt under § 14-164-327, the governing body of any municipality or county may adopt an ordinance levying a tax in the amount of one-fourth of one percent (.25%), one-half of one percent (0.5%), three-fourths of one percent (.75%), or one percent (1%) upon all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and upon the privilege of storing, using, distributing, or consuming within this state any tangible personal property which is subject to the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq. The ordinance or ordinances must specify that the tax is being levied under this law.

(B) By levying a tax under this section, the municipality or county levying a tax hereunder shall lose its authority to levy up to a one percent (1%) sales and use tax under § 14-164-327 solely to pay bonded debt only to the extent of the tax levied hereunder.

(2) The proceeds of a tax levied under this section may be used to:

(A) Finance the operation, maintenance and/or rental expense of capital improvements, or a solid waste management system or part thereof as defined in § 8-6-203, or both;

(B) Secure the repayment of bonds by the municipality or county issued under §§ 14-164-301 — 14-164-339;

(C) Acquire or construct capital improvements of a public nature for no more than twenty-four (24) months; or

(D) Any or all of the above.

(b) To the extent permitted by this section, a governing body levying a tax under this section shall follow the procedures prescribed by the Local Government Bond Act of 1985, § 14-164-301 et seq., and the tax shall be collected, reported, and remitted in the same manner and at the same time as a tax levied under the Local Government Bond Act of 1985, § 14-164-301 et seq.

(c)(1)(A) A municipality or county levying a sales and use tax under this section may abolish the tax or both abolish the tax and levy a new sales and use tax at a lower rate after an election called in the same manner as provided in the Local Government Bond Act of 1985, § 14-164-301 et seq., or by a petition of the qualified voters of the municipality or county which levied the tax. As to a petition of the qualified voters, the provisions of Arkansas Constitution, Amendment 7 shall govern.

(B) A new sales and use tax levied under this subsection shall be at a rate authorized by subsection (a) of this section.

(2) This section shall also apply to any tax levied by ordinance adopted prior to February 28, 1992, so long as:

(A) The ordinance levying the tax recited that the tax was being levied under this section; and

(B) The tax was approved at a general or special election for one (1) or more of the uses set forth in subdivision (a)(2) of this section. The effect of this provision is for such a tax to be levied for the approved uses, whether or not the ordinance levying the tax was adopted and the election held prior to February 28, 1992, from and after the date a sales and use tax would otherwise become effective under the Local Government Bond Act of 1985, § 14-164-301 et seq.

(3) The provisions of this section shall not prohibit or affect the ability of a municipality or county from levying a sales and use tax under §§ 26-74-201 et seq., 26-74-301 et seq., 26-75-201 et seq., 26-75-301 et seq., and the Local Government Bond Act of 1985, § 14-164-301 et seq., and use all or a portion of the proceeds thereof to operate, maintain and/or finance capital improvements of a public nature.

(4) In any municipality or county in which a local sales and use tax has been adopted under this section, and all or a portion of the tax is pledged to secure the payment of bonds, that portion of the tax pledged to retire the bonds shall not be repealed, abolished, or reduced so long as the bonds are outstanding.

(5)(A) If no election challenge is filed within thirty (30) days of the date of the publication of the proclamation of the results of the election under this subsection, the abolition of the tax and the levy of a new tax, if any, shall become effective on the first day of the first month of the calendar quarter subsequent to the expiration of the thirty-day period for challenge in § 14-164-329.

(B)(i) In the event of an election contest, the tax shall be collected as prescribed in this subsection unless enjoined by court order.

(ii) Hearings of such matters of litigation shall be advanced on the docket of the courts and disposed of at the earliest practicable time.

(d) Nothing herein shall be construed to expand or limit the aggregate rate at which a sales and use tax may be levied by municipalities and counties under laws in effect on January 1, 1992.

History. Acts 1991, No. 777, §§ 1, 2; 1992 (1st Ex. Sess.), No. 40, § 1; 1995, No. 565, § 13; 1997, No. 947, § 1.

on food and lodging, § 26-74-501 et seq.
Countywide sales and use taxes for
counties without existing tax, § 26-74-
401 et seq.

Cross References. County sales tax

26-73-114. Dedication of sales and use tax to school district.

(a) When a city or county calls an election on the issue of a sales and use tax, it may designate on the ballot that a portion of the tax will be dedicated to a school district or districts located wholly or partially within the city or county on a per capita basis.

(b)(1) The Treasurer of State shall transmit to the treasurer or fiscal officer of each such local school district that district's share of the local sales and use taxes collected under this section at the same time as the city and county taxes are transmitted.

(2) Funds so transmitted may be used by the school district for any purpose for which the school district's general funds may be used.

(c) To the extent § 14-58-502 conflicts with this section, it is hereby superseded.

History. Acts 1993, No. 1070, §§ 1, 4, 5.

A.C.R.C. Notes. References to "this subchapter" in §§ 26-73-101 — 26-73-113

may not apply to this section which was enacted subsequently.

26-73-115. Sales and use tax reports.

(a) Upon a request made in accordance with this section, the Department of Finance and Administration shall provide a report listing all businesses remitting sales and use taxes for the requesting governmental entity.

(b) In order to obtain a report from the department, no more than quarterly, the chief executive officer of a county, city, or town may request a report from the department on the information noted in subsection (a) of this section.

(c) The department shall provide the requested information within thirty (30) calendar days of the request.

History. Acts 2001, No. 1040, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 26-73-101 — 26-73-113

may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — MUNICIPAL CORPORATIONS

SECTION.

26-73-201. Unplatted lots taxed.

26-73-202. Certification of tax rate to county clerk.

26-73-203. [Repealed.]

SECTION.

26-73-204. Injunction to prevent collection or payment.

26-73-205. Correction of assessments by county court.

Cross References. Limitation on levies in cities and towns, § 26-25-102.

Tax levy not to exceed five mills on the dollar, Ark. Const., Art. 12, § 4.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1883, No. 106, § 3: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

26-73-201. Unplatted lots taxed.

In any municipal corporation in which the power exists to impose taxes on lots when platted and recorded, the corporation shall also have power to impose taxes upon parcels of land laid off into lots and sold and leased by metes and bounds, though they shall not have been platted or recorded.

History. Acts 1875, No. 1, § 68, p. 1; C. & M. Dig., § 7580; Pope's Dig., § 9659; A.S.A. 1947, § 19-4502.

26-73-202. Certification of tax rate to county clerk.

The council of any municipal corporation on or before the time fixed by law for levying county taxes may make out and certify to the county clerk the rate of taxation levied by the municipal corporation on the real and personal property within the city or town. The amount so certified shall be placed upon the tax book by the county clerk of the county and collected in the same manner that state and county taxes are collected.

History. Acts 1875, No. 1, § 64, p. 1; § 7576; Pope's Dig., § 9655; A.S.A. 1947, 1883, No. 106, § 1, p. 189; C. & M. Dig., § 19-4501.

CASE NOTES

ANALYSIS

Evidence.
Quorum Courts.

Evidence.

In action to cancel a deed from the Commissioner of State Lands based on sale of realty to state for alleged forfeiture of 1931 taxes, certificate of recorder of city that resolution to levy the tax was adopted, sworn to and duly entered in proceeding of county court, was held admissible over objection that it was parol evidence. *Smith v. Ford*, 203 Ark. 265, 157 S.W.2d 199 (1941).

The testimony of a city recorder that the council minute book, which he had before him, did not indicate a tax levy by the city and testimony by a county clerk that his records disclosed an assessment of a five-mill city tax was of a competent, but not of a conclusive, nature on the question of whether the tax was actually levied. *McGee v. Mainard*, 208 Ark. 1001, 188 S.W.2d 635 (1945).

Quorum Courts.

A quorum court does not have the power to change millages voted by city councils. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958).

In action involving the ad valorem assessment of real property where assessor, after making up his assessment books and an abstract of the assessed property, filed claim with the county clerk who made out his report in accordance with the assessor's abstract, forwarding it to the state tax coordination division, during which time the county board of equalization was in session, the action of the quorum court directing taxes be collected from the value established by the assessor was void, since it was without authority to levy millages on any basis other than the assessment of the assessor, as were equalized and adjusted by the equalization board. *Layne v. Strode*, 229 Ark. 513, 317 S.W.2d 6 (1958).

Trial court did not err in denying a writ of mandamus brought by pension and retirement board to require county clerk and county collector to collect a four-tenths millage ad valorem tax as the city council did not approve the resolution for the tax prior to the county quorum court's meeting, as required by § 14-14-904(b)(1), and nothing in this section extended the statutory deadline for city council to certify a millage rate to the county clerk. *Russellville Police Pension Ret. Bd. v. Johnson*, 365 Ark. 99, 225 S.W.3d 357 (2006).

26-73-203. [Repealed.]

Publisher's Notes. This section, concerning payment of taxes by county collec-

tor, was repealed by Acts 2003, No. 295, § 18. The section was derived from Acts

1875, No. 1, § 67, p. 1; C. & M. Dig., § 7579; Pope's Dig., § 9658; A.S.A. 1947, § 19-4503.

26-73-204. Injunction to prevent collection or payment.

Any person owning property and having taxes to pay in any city or town upon application to any judge or court having authority to grant injunctions may enjoin the collection of any tax levied in the city or town without authority of law and may also enjoin the issue or the payment by the city or town of any warrants, certificates, or other form of evidence of indebtedness against the city or town issued or contracted without authority of law.

History. Acts 1875, No. 1, § 89, p. 1; C. & M. Dig., § 7589; Pope's Dig., § 9675; A.S.A. 1947, § 19-4504.

RESEARCH REFERENCES

Ark. L. Rev. Taxpayers' Suits to Prevent Illegal Exactions in Arkansas, 8 Ark. L. Rev. 129.

CASE NOTES

Standing to Sue.

An owner of property within a waterworks improvement district has the right to sue to prevent the city from wasting or

mismanaging or improperly diverting the fund of the improvement district. *City of Bentonville v. Browne*, 108 Ark. 306, 158 S.W. 161 (1913).

26-73-205. Correction of assessments by county court.

(a) At the October term of county court, and during this term, any person who may think himself or herself aggrieved by the assessment of his or her property may appeal to the same court and have the assessment corrected.

(b) Every appeal shall be in writing and shall state specifically the ground of the appeal and the matter or thing complained of, and no other matter shall be considered by the court than that set forth in the written appeal.

(c) The county court shall hear and determine all appeals in a summary way upon evidence and shall correct and adjust the assessment lists accordingly.

History. Acts 1875, No. 1, §§ 91-93, p. 1; C. & M. Dig., §§ 7590-7592; Pope's Dig., §§ 9676-9678; A.S.A. 1947, §§ 19-4505 — 19-4507.

A.C.R.C. Notes. This section may be impliedly repealed by §§ 26-27-317 and 26-27-318. Both §§ 26-27-317 and 26-27-318 were enacted after this section. Sec-

tion 26-27-317 requires a property owner to apply to the county equalization board on or before the third Monday in August for an adjustment of the property owner's property assessment and sets out the procedures for the application and the hearing on the adjustment. Section 26-27-318 governs the procedure for appeals to the

county court from the county equalization board's decision on the application for adjustment. Section 26-27-318(b) provides: "No appeal to the county court shall be taken except by those who have first exhausted their remedy before the county equalization board, except for all cases in which the petitioner shall have had no opportunity to appear before the county equalization board."

Publisher's Notes. Act of March 9, 1875, § 94, provided that all territorial additions heretofore made to any city or municipal corporations under the provisions of §§ 3318-3328 of Chapter 72 of Gantt's Digest shall remain as they then were until otherwise changed in accordance with this act.

SUBCHAPTER 3 — COUNTIES

SECTION.

26-73-301. Limitation on levy of sales or use tax.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to

become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-73-301. Limitation on levy of sales or use tax.

(a) Any municipal or county sales or use tax levied pursuant to the laws of this state shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; and
- (6) Mobile home.

(b) This provision shall apply to all municipal and county sales and use taxes adopted before or after this section and shall be in addition to and not in lieu of any other limitations imposed by law.

History. Acts 1993, No. 669, § 6; 2003, No. 1273, § 33.

Amendments. The 2003 amendment substituted "on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes" for "from a single transaction."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agree-

ment went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

CHAPTER 74

COUNTY SALES AND USE TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SALES AND USE TAX FOR CAPITAL IMPROVEMENTS.
3. SALES TAX FOR CAPITAL IMPROVEMENTS.
4. SALES AND USE TAX FOR COUNTIES WITHOUT EXISTING TAX.
5. SALES TAX ON FOOD AND LODGING.
6. SALES AND USE TAX FOR CAPITAL IMPROVEMENTS OF A COMMUNITY COLLEGE.

Cross References. Dedication of county sales tax to technical colleges, § 6-53-307.

RESEARCH REFERENCES

A.L.R. Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.

Applicability of sales or use taxes to motion pictures and video tapes. 10 A.L.R.4th 1209.

Eyeglasses or other optical accessories as subject to sales or use tax. 14 A.L.R.4th 1370.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 A.L.R.4th 269.

Failure to file, or deficiency in, state or local sales tax return. 20 A.L.R.4th 952.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th

750.

Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Architectural drawings or illustrations as exempt from sales or use tax. 27 A.L.R.5th 794.

Am. Jur. 68 Am. Jur. 2d, Sales Tax., § 1 et seq.

C.J.S. 85 C.J.S., Tax. § 1231 et seq.

CASE NOTES

Cited: *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-74-101. [Reserved.]

26-74-102. Natural gas used to make glass.

SECTION.

26-74-103. Fort Smith Clearinghouse.

Effective Dates. Acts 2007, No. 182,
§ 32: Jan. 1, 2008.

26-74-101. [Reserved.]**26-74-102. Natural gas used to make glass.**

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and
- (3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; 2007, No. 182, § 27.

Publisher's Notes. Acts 1993, No. 1140, § 1, is also codified as § 26-52-423, § 26-53-134, and § 26-75-101.

Amendments. The 2007 amendment

substituted “§§ 26-52-301 and 26-52-302” for “§§ 26-52-301, 26-52-302, and 26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-74-103. Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and
- (3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 28.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as § 26-52-424, § 26-53-135, and § 26-75-102.

Amendments. The 2007 amendment substituted “26-63-402” for “26-52-1002.”

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

SUBCHAPTER 2 — SALES AND USE TAX FOR CAPITAL IMPROVEMENTS

SECTION.

- 26-74-201. Purpose.
- 26-74-202. Construction.
- 26-74-203. Definitions.
- 26-74-204. Issuance of bonds.
- 26-74-205. Voters' approval of bonds.
- 26-74-206. Pledge of revenues.
- 26-74-207. Call for tax election.
- 26-74-208. Form of ballot.
- 26-74-209. Conduct of election and results — Challenges.
- 26-74-210. Resubmission of question of levy or repeal.
- 26-74-211. Notification of results.
- 26-74-212. Applicability of tax.
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SECTION.

- 26-74-214. Disposition of funds.
- 26-74-215. Rules and regulations.
- 26-74-216. Procedures and penalties for enforcement.
- 26-74-217. Repeal upon levy of additional statewide gross receipts tax — Exception.
- 26-74-218. Existing county sales taxes.
- 26-74-219. Levy of use tax in counties having sales tax.
- 26-74-220. Maximum tax limitation.
- 26-74-221. Administration of Local Sales and Use Tax Trust Fund.
- 26-74-222. Levy of sales tax only.
- 26-74-223. Levy of compensating use tax.

Effective Dates. Acts 1981 (1st Ex. Sess.), No. 26, § 20: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the counties are faced with financial crises with reference to having sufficient tax resources to provide county services to their inhabitants. That such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such counties. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 278, § 5: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 991 of 1981 and Act 26 of the First Extraordinary Session of 1981 authorizing the levy of a one percent (1%) county sales tax are in need of clarification as regards the authority to levy such tax for a limited period of time; that some counties did levy a county sales tax for a specified period of time, and that such taxes should expire on the date approved by the voters; and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 513, § 2: Mar. 24, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that interest income from city and county sales and use tax funds held by the State is an urgent need of cities and counties. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1983, No. 723, § 11: Mar. 23, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that certain counties within the State are in dire need of additional capital funds to provide essential services and facilities of such counties; that the most appropriate way for such counties to provide such funds is by the levying of a sales and use tax on the gross receipts derived from certain businesses within the county and the issuance of bonds payable from such tax revenues as herein authorized; that this Act is needed and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 526, § 3: Mar. 25, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that under the present laws relating to the levy of county sales and use taxes when a proposition for the levy of such tax is submitted to the people and is either approved or defeated, the question may not again be submitted to the electors for a period of twelve (12) months from the date the proposition was last voted on; that this is unduly restrictive and should be altered to permit submission of the question of the levy of a tax to electors at more frequent intervals, and that this Act is designated to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 1028, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that unless this Act is given effect immediately, the taxpayers of the State of Arkansas will be severely burdened in a manner not intended by this General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 826, § 4: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that counties and municipalities are experiencing difficult economics and the effect and applicability of various tax levies is in need of immediate clarification. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 61, § 4: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning this matter are inadequate for the welfare and protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 536, § 6: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements and to provide services to their inhabitants; that the citizens in most cities and counties have opted to levy an additional gross receipts tax on themselves, making over ninety percent (90%) of all sales in Arkansas subject to local gross receipts taxation; that the present method of not collecting the tax on delivery to an address in a city or county that does not levy a similar tax results in sales on which no tax is collected, thereby depriving the cities and counties of much needed revenues; that this system is working a great hardship on local merchants by causing extra bookkeeping expense; that eliminating the exception provided in the present collection process would provide additional revenues for cities and counties; and that the financial crises of the cities and counties constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to them. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1991, No. 621, § 8: Mar. 19, 1991. Emergency clause provided: "It is hereby found and determined that cities and counties are losing needed tax revenues because of the inability to identify taxes collected by out-of-state vendors to the appropriate taxing jurisdiction; that this Act is designed to remedy this problem by providing a mechanism to fairly identify and distribute these taxes to the cities and counties. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public safety, health and welfare shall be in full force and effect on and after the date of its passage and approval."

Acts 1991, No. 765, § 22: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund

capital improvements of a public nature and to provide services to their inhabitants; that under current law the counties are restricted to a one percent (1%) levy and the cities are restricted to a one-half of one percent (0.05%) or one percent (1%) levy; that the ability to levy a sales and use tax computed on one-fourth of one percent, one-half of one percent, three-fourths of one percent, or one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 73, § 7: Apr. 1, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements and to provide services to their inhabitants; that the citizens in most cities and counties have opted to levy an additional gross receipts tax on themselves, making over ninety percent (90%) of all sales in Arkansas subject to local gross receipts taxation; that the present method of collection of the tax on sales of items and services sold by a levying city or county has created an undue hardship on holders of direct pay permits; that the provisions of this act will relieve that hardship and provide additional revenues for cities and counties; and that the hardship constitutes such an emergency that the immediate passage of this act is necessary in order to provide relief to them. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force and effect for purchases made on and after April 1, 1992."

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that noti-

fication of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 1999, No. 1137, § 12: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of Act 1176 of 1997 were intended to encourage the establishment of uniform definitions of the term 'single transaction' in connection with the levy and collection of local sales and use taxes. However, since the procedures established by the provisions of Act 1176 have caused confusion and have resulted in inconsistent applications of the procedures for adoption of local sales and use taxes, the interests of a number of cities and counties who have otherwise complied fully with the provisions of Arkansas law may be prejudiced. This is a result never intended by the General Assembly and which could result in financial hardships and the reduction of services provided by Arkansas cities and counties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1560, § 8: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that legislation is needed for the collection and enforcement of certain county-wide sales and use taxes and that the immediate passage of this act is necessary for the Department of Finance and Administra-

tion to fulfill its duties with respect to such taxes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to

the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport Act are suffering material adverse consequences under current procedures; and that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the develop-

ment of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based businesses are dependent upon the State of Arkansas creating an environment that

allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

CASE NOTES

ANALYSIS

Constitutionality.
Scope of Taxing Authority.

Constitutionality.

Act 26 of the First Extraordinary Session of 1981, codified at § 26-74-201 et seq., as amended by Act 31 of the First Extraordinary Session of 1987, codified at § 26-74-319, is not vague and contains no improper delegation of authority. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91

(2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Scope of Taxing Authority.

The state's taxing authority is much broader than the limited authority delegated to the counties under Act 991 of 1981, codified at § 26-74-301 et seq., and Act 26 of the First Extraordinary Session of 1981, codified at § 26-74-201 et seq. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

26-74-201. Purpose.

(a) This subchapter is intended to supplement all constitutional provisions and other acts adopted for the acquiring, constructing, and equipping of capital improvements of a public nature and the issuance of bonds for the financing of capital improvements of a public nature.

(b) When applicable, in accordance with the provisions of this subchapter, this subchapter may be used by any county as an alternative, notwithstanding and without the necessity of compliance with any constitutional provision or any other act authorizing the county, or any commission or agency of the county, to issue bonds for the purpose of

financing the acquisition, construction, and equipment of capital improvements of a public nature.

(c)(1) This subchapter is intended to supplement and be levying authority in addition to all other statutes authorizing countywide sales and use taxes.

(2) Collections of a tax levied by this subchapter may be used to secure the payment of bonds or for any purpose for which the general fund of a municipality or county may be used, or a combination thereof, except as may be expressly limited by the ballot for the election at which the tax was approved or by the ballot for a subsequent election on the purposes for the tax.

History. Acts 1981 (1st Ex. Sess.), No. § 7; A.S.A. 1947, § 17-2042; Acts 2001, 26, § 24, as added by Acts 1983, No. 723, No. 1560, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

Initiative Petitions.

An initiative petition, which proposed an ordinance to reduce the percentage rate of an existing county sales and use tax, was facially invalid and failed to comply with Amendment 7 to the Arkansas Constitution because it was contrary

to the specific enactment procedures mandated by this subchapter. *Stilley v. Henson*, 342 Ark. 346, 28 S.W.3d 274 (2000).

Cited: *Pledger v. Brunner & Lay, Inc.*, 308 Ark. 512, 825 S.W.2d 599 (1992); *Sanders v. County of Sebastian*, 324 Ark. 433, 922 S.W.2d 334 (1996).

26-74-202. Construction.

This subchapter shall be liberally construed to accomplish the purposes of this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 24, as added by Acts 1983, No. 723, § 7; A.S.A. 1947, § 17-2042.

26-74-203. Definitions.

As used in this subchapter:

(1) "Acquire" means to obtain at any time by gift, purchase, or other arrangement, any capital improvement of a public nature or any portion of a capital improvement of a public nature, whether constructed and equipped before acquisition, partially constructed and equipped before acquisition, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the quorum court of the county shall determine;

(2) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(3) "Capital improvements of a public nature" means:

- (A) Streets;
- (B) Roads;
- (C) Public parks;
- (D) Port facilities;
- (E) Tourism facilities;
- (F) Airport facilities;
- (G) Sewerage facilities;
- (H) Waterworks facilities;
- (I) Fire protection facilities;
- (J) Convention center facilities;
- (K) Courthouses;
- (L) Police facilities;
- (M) Public transit facilities;
- (N) Auditoriums;
- (O) Prisons;
- (P) Libraries;
- (Q) Hospital and nursing home facilities;
- (R) Solid waste facilities;
- (S) Sanitation facilities;
- (T) Bridges;
- (U) Electric facilities;
- (V) Hydroelectric facilities;
- (W) Facilities for the securing and developing of industry;
- (X) Natural gas facilities;
- (Y) Parking facilities;
- (Z) Public housing facilities;
- (AA) Pollution control facilities;
- (BB) Public education facilities;
- (CC) Drainage facilities;
- (DD) Pedestrian facilities;
- (EE) Lakes;
- (FF) Dams;
- (GG) Waterways;
- (HH) Regional mobility authority surface transportation systems;

and

- (II) Research parks;

(4) "Construct" means to build, in whole or in part, in such manner and by such method, including contracting to build, and if contracting to build, by negotiation or bidding upon such terms and pursuant to such advertising as determined by the quorum court of the county, under the circumstances existing at the time, as will most effectively serve the purposes of this subchapter;

(5) "Director" means the Director of the Department of Finance and Administration, or any successor of the director, or any authorized agent of the director;

(6) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures,

heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(7) "Facilities" means real property, personal property, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind; and

(8) "Lease" means a lease of a capital improvement of a public nature by and between a county as lessee and a person as lessor, except as used in § 26-74-204.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 21, as added by Acts 1983, No. 723, § 1; A.S.A. 1947, § 17-2039; Acts 1995, No. 565, § 15; 2005, No. 2275, § 2; 2007, No. 1045, § 4.

Amendments. The 2005 amendment added (HH) to present (3).

The 2007 amendment added (II) to (3), and made related changes.

26-74-204. Issuance of bonds.

(a) Counties levying the tax permitted in this subchapter are authorized, in addition to the authority existing under the laws of the state, enacted, to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a "project", within or near such counties, and are authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues which the county is entitled to receive from the tax levied by such county pursuant to this subchapter to pay lease rentals or the principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a county pursuant to this subchapter shall be authorized by ordinance of the quorum court. The bonds may:

(1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;

(2) Be exchangeable for bonds of another denomination;

(3) Be in such form and denominations;

(4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear such date or dates;

(7) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(8) Bear interest at such rate or rates;

(9) Be payable in such medium of payment;

(10) Be subject to such terms of redemption; and

(11) Contain such other terms, covenants, and conditions as the ordinance authorizing their issuance may provide including, without limitation, those pertaining to:

(A) The custody, investment, and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the county and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the county clerk of the county, shall be filed with the Director of the Department of Finance and Administration and with the Treasurer of State.

(d) The bonds shall be executed by the county judge of the county and attested by the county clerk of the county by their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the county judge. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the county issuing the bonds.

(e) The bonds shall not be general obligations of the county involved but shall be special obligations secured and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the county within the meaning of any constitutional or statutory limitation. The principal of and interest on all bonds issued under the authority of this subchapter shall be secured by a pledge of and shall be payable from all or any part of the revenues derived by the county from the tax levied by the county pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by other laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues of such facilities. The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the county and the holders and registered owners of the bonds issued by the county under the authority of this subchapter, which contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the county may be

enforced by mandamus or any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

(f) The ordinance authorizing the bonds may provide for the execution by the county with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the priority between and among successive issues and series and may contain any other terms, covenants, and conditions that are deemed desirable by the quorum court including, without limitation, those pertaining to:

(1) The custody, investment, and application of the proceeds of bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the county and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(g) Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of the sale. In either case, the bonds may be sold at such price as the county may accept, including sale at a discount.

(h) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law. Any municipality or county or any board, commission, or other authority established by any such municipality or county or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

(i) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(j) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or

part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 22, as added by Acts 1983, No. 723, § 5; A.S.A. 1947, § 17-2040.

26-74-205. Voters' approval of bonds.

No ordinance shall be passed by the quorum court of a county under § 26-74-204 until a majority of the qualified electors of the county voting on the question shall have approved the principal amount of the bonds and the purpose for which the bonds will be issued at an election called for that purpose and conducted in accordance with the general county election laws.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 25, as added by Acts 1983, No. 723, § 8; A.S.A. 1947, § 17-2043.

26-74-206. Pledge of revenues.

Any county levying the tax as permitted in this subchapter is authorized to pledge all or any part of the revenues which the county is entitled to receive from the tax levied pursuant to this subchapter to the payment of lease rentals or principal of and interest on bonds issued by such county under the authority of any other law in effect for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature, or on bonds issued to refund such bonds, and such bonds, including the refunding bonds, shall be deemed to have been authorized by this subchapter for the purposes of §§ 26-74-210, 26-74-214, and 26-74-217.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 23, as added by Acts 1983, No. 723, § 6; A.S.A. 1947, § 17-2041.

26-74-207. Call for tax election.

(a)(1) A county quorum court may call an election for the levy of a countywide sales and use tax in the amount of:

- (A) One-eighth of one percent (0.125%);
- (B) One-fourth of one percent (0.25%);
- (C) One-half of one percent (0.50%);
- (D) Three-fourths of one percent (0.75%);
- (E) One percent (1%); or
- (F) Any combination of these amounts.

(2) The election shall be held within one hundred twenty (120) days of the ordinance calling the election.

(3) Each tax shall be adopted by ordinance and with approval of the voters of the county in accordance with this subchapter.

(b)(1) If a petition is filed requesting an election on the question of the levy of the tax authorized under this subchapter, the quorum court shall submit the question of the levying of the tax to the electors.

(2) The petition must be signed by a number of the legal voters in the county that shall be no less than fifteen percent (15%) of the number of votes cast for the office of circuit clerk at the last preceding general election.

(3) The election shall be held within one hundred twenty (120) days of the filing of the petition.

(c) The county quorum court shall notify its county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

History. Acts 1981 (1st Ex. Sess.), No. 26, §§ 1, 2; A.S.A. 1947, §§ 17-2021, 17-2022; Acts 1991, No. 765, § 6; 1999, No. 1357, § 1; 2001, No. 1560, § 5.

Cross References. One-half (0.5%)

percent sales and use tax for counties without existing tax, § 26-74-401 et seq.

Sales tax on food and lodging, § 26-74-501 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES**ANALYSIS**

Constitutionality.
In General.
Applicability.
Notice.

Constitutionality.

Members of a county quorum court could not refuse, on constitutional grounds, to complete the ministerial act of

referring a sales tax measure to county's electors; no constitutional right of the members was implicated in requiring them to set an initiative and referendum election under Ark. Const. Amend. 7. *Simes v. Huckabee*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 4481 (Jan. 19, 2006).

In General.

Although this section requires voter approval of local tax ordinances, it does not

require a subsequent election any time the General Assembly modifies an exemption. *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

State officials were granted summary judgment on the county quorum court members' claim that Ark. Const. Amend. 7 and this section were unconstitutional by allowing the members' incarceration where the claim was nothing more than an appeal of a lower state court's finding of contempt and the court members' subsequent incarceration and, as a result, was barred by the Rooker-Feldman doctrine. *Simes v. Huckabee*, — F. Supp.2d —, 2002 U.S. Dist. LEXIS 27033 (E.D. Ark. Sept. 30, 2002), rev'd, 354 F.3d 823 (8th Cir. Ark. 2004).

Applicability.

Plaintiffs' assertion that ordinance calling for an election to submit one-cent sales-and-use tax to voters violated § 14-14-908 held without merit where the ordinance did not itself levy a tax but was

merely the first step in a process authorized by § 26-74-201 for the collection of the tax. *Sanders v. County of Sebastian*, 324 Ark. 433, 922 S.W.2d 334 (1996).

Notice.

Where the official ballot and voting instructions used at a county-wide special election called for the voters to vote for or against the adoption of a 1% sales tax pursuant to the provisions of Acts 1981, No. 991, as amended by Acts 1981, No. 26, First Extraordinary Session, but no mention was made of a 1% compensating use tax, a subsequent attempt by the quorum court to impose a 1% use tax pursuant to the favorable vote at the special election was invalid, because the ballot title used at the special election did not mention a possible use tax nor were the references to the acts of the legislature sufficient to put the voters on notice that they were also voting on a use tax. *Ragan v. Venhaus*, 289 Ark. 266, 711 S.W.2d 467 (1986).

26-74-208. Form of ballot.

(a) The ballot title to be used shall be substantially in the following form:

“[] FOR adoption of a percent (.... %) sales and use tax within (Name of county).”

“[] AGAINST adoption of a percent (.... %) sales and use tax within (Name of county).”

(b)(1) The ballot title may also include an expiration date for the levy of the tax, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the tax proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax or the allocation or distribution of revenues, or both, and if the tax is approved, the proceeds shall only be used for the designated purposes and distributed in the manner set forth in the ballot.

(B) The county's share of the proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(2)(A) The quorum court of a county may refer to the vote of the people a change in the indicated use of revenues derived from a sales and use tax levied by the county that was approved by the voters, but a change shall not alter the allocation of tax collections among the county and municipalities within the county.

(B) If the quorum court of a county refers to the vote of the people a change in the indicated use of revenues derived from a sales and use tax, the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the vote of the people; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the indicated use of revenues derived from a sales and use tax shall be conducted in the manner provided by law for all other county elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-74-209.

(3) If the voters approve a change in the indicated use of revenues derived from a sales and use tax, the change in the indicated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-74-209.

(4)(A) If the voters do not approve a change in the indicated use of revenues derived from a sales and use tax, the tax shall continue to be collected and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the indicated use of revenues derived from a sales and use tax shall not constitute an election on the levy of the tax.

(5) Notwithstanding anything in this subchapter to the contrary, in any county that a local sales and use tax has been adopted in the manner provided for in this subchapter and a portion of the revenues derived from the tax has been pledged to secure lease rentals or bonds, the purpose for the tax may not be changed to reduce the pledge in favor of the lease or bonds.

(d)(1) Any tax adopted for a specified period of time shall cease to be levied on the date indicated on the ballot.

(2) This section shall be effective retroactive to December 1, 1981, and if a majority of the qualified electors of any county in this state voting on the question at an election held subsequent to this date have voted to adopt a sales tax levy for a specific duration of time as stated on the ballot, the authority to levy the sales tax shall cease on the date specified on the ballot for termination of the sales tax the same as if the question had been voted upon under the provisions of this subchapter, which are made retroactive to December 1, 1981.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 3; 1983, No. 278, § 3; A.S.A. 1947, § 17-2023; Acts 1991, No. 765, § 7; 1995, No. 565, § 1; 1999, No. 1478, § 1; 2003, No. 1156, § 1; 2005, No. 1160, § 1.

Amendments. The 2003 amendment

redesignated former (c) as present (c)(1)(A) and added (c)(1)(B) and (c)(2) through (c)(5).

The 2005 amendment substituted "sales and use tax" for "sales or use tax" throughout this section; inserted "county's

share of the" in (c)(1)(B); and, in (c)(2)(A), inserted "levied by the county" and "but a change ... within the county."

CASE NOTES

Ballot Title.

Where the official ballot and voting instructions used at a county-wide special election called for the voters to vote for or against the adoption of a 1% sales tax pursuant to the provisions of Acts 1981, No. 991, as amended by Acts 1981, No. 26, First Extraordinary Session, but no mention was made of a 1% compensating use tax, a subsequent attempt by the quorum

court to impose a 1% use tax pursuant to the favorable vote at the special election was invalid, because the ballot title used at the special election did not mention a possible use tax nor were the references to the acts of the legislature sufficient to put the voters on notice that they were also voting on a use tax. *Ragan v. Venhaus*, 289 Ark. 266, 711 S.W.2d 467 (1986).

26-74-209. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b) When the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(c) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(d)(1) The county court shall notify the Director of the Department of Finance and Administration of the countywide tax after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(2)(A) If no election challenge is timely filed, the countywide tax shall be levied, effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day challenge period, on the gross receipts from the sale at retail within the county of all items and services that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(B) In every county where the local sales and use tax has been adopted pursuant to the provisions of this subchapter, there is imposed an excise tax on the storage, use, distribution, or consumption within the county of tangible personal property or services purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the county at the same rate on the sale price of the property or in the case of leases or rentals on the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(3) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(e)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (d) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the court and disposed of at the earliest feasible time.

History. Acts 1981 (1st Ex. Sess.), No. 26, §§ 4-6; A.S.A. 1947, §§ 17-2024 — 17-2026; Acts 1991, No. 765, § 8; 1993, No. 266, § 1; 1995, No. 565, § 2; 2003, No. 1273, § 34.

Amendments. The 2003 amendment added (d)(1); redesignated former (d) as (d)(2) and (d)(3); and, in present (d)(2), substituted “after a minimum of sixty (60) days’ notice by the director to sellers and after” for “subsequent to,” inserted “and services” and “or services,” and substituted “that” for “which.”

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a spe-

cific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

CASE NOTES

Time Limitations.

Where plaintiff did not assert claims of alleged misconduct in election procedures

until he filed his amended complaint over 30 days after publication of the proclamation of results, his claims were barred by

the statute of limitations of subsection (c).
Sanders v. County of Sebastian, 324 Ark.
433, 922 S.W.2d 334 (1996).

26-74-210. Resubmission of question of levy or repeal.

(a)(1) When the question of the levy or repeal of a county sales and use tax is submitted to the electors and the proposition is approved or defeated, the question shall not again be submitted to the electors by ordinance of the quorum court of the county or by petition of electors at a special or general election for a period of six (6) months from the date the proposition was last voted upon.

(2)(A) A petition requesting that the issue be submitted to the electors of the county shall contain the signatures of at least fifteen percent (15%) of the electors of the county as determined by the total number of votes cast for all candidates for circuit clerk of the county at the last preceding general election.

(B)(i) The petition shall be filed and verified by the county clerk.

(ii) If the petition is found to be sufficient, the issue shall be submitted to the electors at a special election on a date as may be requested by the petition.

(C) The special election shall be called in accordance with § 7-5-103(b) for a date not more than ninety (90) days from the date on which the county clerk certifies the sufficiency of the petition to the county board of election commissioners.

(b)(1) The ballot title for use in an election on the question of abolishing the county sales and use tax shall be the same as indicated in § 26-74-208, except that the word "ABOLISH" shall be substituted for the word "ADOPTION".

(2) The effective date of any affirmative vote to abolish the tax shall correspond to the dates indicated in this subchapter for the initial effective date of the tax.

(c) Notwithstanding anything in this subchapter to the contrary, in any county in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure lease rentals or the payment of bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is effective or any of such bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 8; 1983, No. 723, § 2; 1985, No. 526, § 1; A.S.A. 1947, § 17-2028; Acts 2005, No. 2145, § 68; 2007, No. 1049, § 90.

Amendments. The 2005 amendment redesignated former (a)(2)(C) as present (a)(2)(C)(i); and added (a)(2)(C)(ii).

The 2007 amendment, in (a)(2), substituted "on a date" for "or at the next general election" in (B)(ii); and rewrote (C).

CASE NOTES

Reduction of Tax.

The use of the word “reduced” in subsection (c) of this section does not necessarily imply the possibility of a reduction in the rate of a previously levied tax; the plain language of the provision does not

indicate that the overall rate of the tax may be reduced and, rather, provides that the portion of the tax pledged to lease rentals or bonds shall not be reduced. *Stilley v. Henson*, 342 Ark. 346, 28 S.W.3d 274 (2000).

26-74-211. Notification of results.

(a) Within ten (10) days after the certification of the votes of any election resulting in the adoption or abolition of a tax levied pursuant to this subchapter and ninety (90) days before its effective date, the county court shall notify the Director of the Department of Finance and Administration of the results.

(b) A rate change will be effective only on the first day of a calendar quarter after a minimum of sixty (60) days’ notice by the director to sellers.

(c) A rate change on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog will be applicable on the first day of a calendar quarter after a minimum of one hundred twenty (120) days’ notice by the director to the sellers.

(d) For sales and use tax purposes only, a local boundary change will become effective on the first day of a calendar quarter after a minimum of sixty (60) days’ notice by the director to sellers.

History. Acts 1981 (1st Ex. Sess.), No. 26 § 9; A.S.A. 1947, § 17-2029; Acts 2003, No. 383, § 3; 2003, No. 1273, § 35.

Amendments. The 2003 amendment by No. 383 deleted “and furnish the director with a map clearly indicating the boundaries of the county and the boundaries of each incorporated area within the county” from the end; and made stylistic changes.

The 2003 amendment by No. 1273 designated the former undesignated paragraph of the section as (a); inserted “and ninety (90) days before its effective date” in (a); and added (b), (c) and (d).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and

out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if

the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax

Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-212. Applicability of tax.

(a) A county sales tax levied under this subchapter or in § 26-74-301 et seq. shall be applicable to sales of items and services sold by a business, and the tax shall be administered under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) When a direct pay permit holder purchases tangible personal property or taxable services either from an Arkansas or out-of-state vendor for use, storage, consumption, or distribution in Arkansas, the permit holder shall accrue and remit the county sales or use tax, if any, pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 7; A.S.A. 1947, § 17-2027; Acts 1991, No. 536, § 1; 1991, No. 765, § 9; 1992 (1st Ex. Sess.), No. 78, § 2; 2003, No. 374, §§ 1, 2; 2003, No. 1273, § 36; 2007, No. 181, § 41.

Publisher's Notes. The version of this section, as amended by Acts 1991, No. 765, § 9, concerning applicability of tax, was repealed by Acts 1992 (1st Ex. Sess.), No. 73, § 1.

Amendments. The 2003 amendment by No. 374 redesignated former (a) as (a)(1)(A) and added "Except as provided in subdivision (a)(1)(B) of this section" preceding "A county sales tax," and made minor stylistic changes; in (b), substituted "apply for" "be applicable" following "shall not."

The 2003 amendment by No. 1273 rewrote (a); deleted former (b); and redesignated former (c) as present (b).

The 2007 amendment substituted "pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522" for "of the county where the property or services are first used, stored, consumed or distributed" in (b).

Effective Dates. Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is

necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning

state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45, provided: "Section 1 through 43 of this act are effective on January 1, 2008."

CASE NOTES

Constitutionality.

The assertion that a city and county imposed a retail sales tax on sales made outside the city and county did not plead an illegal exaction claim since the plaintiffs claimed neither that funds generated

by the sales taxes had been misapplied or illegally spent or that the local tax ordinances were invalid. *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

26-74-213. Rebates.

(a) A county shall provide in its ordinance authorized by this subchapter a rebate from the county for taxes collected pursuant to this subchapter in excess of the tax on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; or
- (6) Mobile home.

(b)(1) If a rebate would be due pursuant to the provisions of this subchapter as a result of the purchase of a new or used motor vehicle

and if the tax on the new or used motor vehicle is collected directly from the purchaser pursuant to the provisions of § 26-52-510, then the Director of the Department of Finance and Administration shall collect only the amount of tax due less the amount to which the purchaser would be entitled under the rebate provisions of this subchapter.

(2) If the rebate is credited against tax paid as set out in this subsection, then no other rebate of the tax shall be given.

(c) In a county that has adopted a county sales tax pursuant to § 26-74-301 et seq. before December 1, 1981, the county quorum court may by ordinance provide for a rebate of any county sales and use taxes collected in excess of a specified amount on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; or
- (6) Mobile home.

History. Acts 1981 (1st Ex. Sess.), No. 26, §§ 10, 12; A.S.A. 1947, §§ 17-2030, 17-2032; Acts 1993, No. 669, § 2; 2003, No. 1273, § 37.

Amendments. The 2003 amendment, in (a), substituted “on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes” for “from a single transaction”; in (b)(1), substituted “if” for “where” twice and substituted “Director of the Department of Finance and Administration” for “director”; in (b)(2), substituted “if” for “where”; and rewrote (c).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have

petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section

of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to

the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-74-214. Disposition of funds.

(a)(1) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and other subchapters authorizing county sales and use taxes in each county and shall deposit all such revenues with the Treasurer of State.

(2)(A) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) of the funds as a charge by the state for its services as specified in this subchapter and all other subchapters authorizing county sales and use taxes and shall credit the three percent (3%) to the Constitutional Officer's Fund and the State Central Services Fund.

(B) In addition, the Treasurer of State may retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(i) Make remittances to the county for rebates made by the county for taxes in excess of amounts specified by the particular county ordinances paid by a taxpayer on a single transaction;

(ii) Make refunds for overpayment of the taxes; and

(iii) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(b)(1) Except as set forth in subsections (f) and (g) of this section, all funds received by the Treasurer of State from the sales tax levied by each county after deducting the three percent (3%) for the Constitutional and Fiscal Agencies Fund shall be deposited into the Local Sales and Use Tax Trust Fund and shall be credited to the account of the county in which it was collected.

(2)(A)(i) The Treasurer of State shall monthly transmit to the county treasurer and to the city treasurer of each municipality located in a county levying the tax authorized in this subchapter and all other subchapters authorizing county sales and use taxes their per capita share, if any, of the moneys received by the Treasurer of State from all of the sales taxes levied by the county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(ii) The county treasurer of any county that has levied a sales tax pursuant to this subchapter and that rebates taxes paid on a single transaction in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(B)(i) If the ballot is silent on the method of distribution, it shall be per capita among the county and each municipality located within

the county unless an interlocal agreement is executed between the affected county and its municipalities indicating a different distribution.

(ii) If an interlocal agreement is used, a copy of the interlocal agreement shall be furnished to the Treasurer of State and the distribution of the tax shall be as agreed upon in the interlocal agreement.

(iii) The ballot shall specify the method of distribution contained in the interlocal agreement if any method of distribution other than a per capita share is to be used.

(iv) A copy of the ballot shall be furnished to the Treasurer of State.

(c)(1) Funds received by the counties and municipalities pursuant to the provisions of this subchapter may be used by the counties and municipalities for any purpose for which the county general funds or the city general funds may be used, subject to designations set forth in the ballot, if any.

(2)(A) The ballot for the tax may provide for distribution to a public entity in the county other than a municipality or a county.

(B) In the case of allocations other than to a county or municipality, the Treasurer of State shall transmit funds to the county treasurer, and the county treasurer shall promptly transmit the funds to the designated public entity.

(3) If the funds received are as a result of a ballot dedicating all or a portion of a tax to a technical college, community college, two-year college, or satellite campus of a community college for capital improvements or for maintenance and operation, the Treasurer of State shall transmit tax funds for the college to the county treasurer, and the county treasurer shall promptly transmit the funds to the college for which the tax was approved.

(d) The Treasurer of State may make refunds for overpayment of the county sales tax and redeem dishonored checks and drafts issued in payment of the county sales tax from the Local Sales and Use Tax Trust Fund.

(e)(1) When any tax adopted by a county pursuant to this subchapter is abolished, the director shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the county and municipalities in the county at the time of termination of the collection of the tax to:

(A) Cover possible rebates by the county;

(B) Cover refunds for overpayment of taxes; and

(C) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(2) After one (1) year has elapsed after the effective date of the abolition of the tax in any county, the director shall transfer the balance in that county's account to the county and municipalities in the county and shall close the account.

(f)(1) As indicated by a certified copy of an ordinance of the quorum court of the county previously filed with the director and the Treasurer

of State, any moneys collected that are pledged to secure lease rentals or the payment of bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into a bank or banks designated by the county, as cash funds, and transmitted to the county subject to the charges payable and retainage authorized in this section.

(2) Charges deducted shall be transmitted to the Treasurer of State, and amounts retained shall be retained by the director as cash funds.

(g)(1) Except for revenue collected under subdivision (g)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this section.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 11; 1983, No. 723, § 3; A.S.A. 1947, § 17-2031; Acts 1989 (3rd Ex. Sess.), No. 61, § 1; 1997, No. 1176, § 4; 1999, No. 1478, § 2; 2003, No. 64, § 1; 2007, No. 166, § 2.

Amendments. The 2003 amendment added (c)(3).

The 2007 amendment inserted "Except as ... this section" in (b)(1); and added (g).

26-74-215. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the administration, collection, enforcement, and operation of the taxes authorized in this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 13; A.S.A. 1947, § 17-2033.

26-74-216. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any local tax imposed pursuant to this subchapter shall be the same as for the state gross receipts tax and compensating tax, as set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in

payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any city or county under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from such sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the city or county.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 14; A.S.A. 1947, § 17-2034.

26-74-217. Repeal upon levy of additional statewide gross receipts tax — Exception.

(a) Subject to the provisions of subsection (b) of this section, if the General Assembly shall levy an additional statewide gross receipts tax of one percent (1%) or more, the quorum court of any county which has levied a sales tax or a sales and use tax pursuant to the authority granted in this subchapter or under the provisions of § 26-74-301 et seq., may repeal that county sales tax or county sales and use tax by ordinance approved by the quorum court.

(b) In any county in which a local sales tax or sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is effective or any of the bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 15; 1983, No. 723, § 4; A.S.A. 1947, § 17-2035.

26-74-218. Existing county sales taxes.

All county sales taxes adopted under the provisions of §§ 26-74-301 — 26-74-314 which are in effect on December 1, 1981, shall remain in full force and effect and are not repealed by the provisions of this subchapter. However, these taxes shall be administered in accordance with this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 16; A.S.A. 1947, § 17-2036. Sess.), No. 26, § 16, is also codified as § 26-74-315.

Publisher's Notes. Acts 1981 (Ex.

26-74-219. Levy of use tax in counties having sales tax.

In all counties which prior to December 1, 1981, have adopted a local sales tax under the provisions of §§ 26-74-301 — 26-74-314, there is also levied a local compensating tax, which in all respects shall be

administered and enforced in accordance with the provisions of §§ 26-74-301 — 26-74-314 and the ordinance levying the local sales tax.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 17, is also codified as 26, § 17; A.S.A. 1947, § 17-2037. § 26-74-316.

Publisher's Notes. Acts 1981 (Ex.

26-74-220. Maximum tax limitation.

(a)(1) Any county general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(b)(1) Each vendor who is liable for one (1) or more county sales or use taxes shall report a combined county sales tax and a combined county use tax on his or her sales and use tax report.

(2) The combined county sales tax is equal to the sum of all sales taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(3) The combined county use tax is equal to the sum of all use taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(c) This section applies only to a tax collected by the Director of the Department of Finance and Administration.

History. Acts 1983, No. 802, §§ 1, 2; A.S.A. 1947, §§ 17-2044, 17-2045; Acts 1993, No. 669, § 3; 1997, No. 1176, § 5; 1999, No. 1137, § 3; 2003, No. 1273, § 38.

Publisher's Notes. Acts 1999, No. 1137, § 8, provided: "It is the express intent of the General Assembly that this act be applied retroactively to any city or county ordinance adopted after January 1, 1998, as it is remedial and procedural in nature."

Amendments. The 2003 amendment redesignated former (a)(1) as present (a), former (a)(2)(A) as present (b)(1), former (a)(2)(B) and (C) as (b)(2) and (3), former (a)(3) as present (c); twice substituted "on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes" for "from a single transaction" in present (a); and deleted former (b).

Effective Dates. Acts 2003, No. 1273,

§ 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales

and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-74-221. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created a trust fund for the remittance of local sales and use taxes which shall be known as the "Local Sales and Use Tax Trust Fund".

(2)(A) There is also created a trust fund which shall be known as the "Identification Pending Trust Fund for Local Sales and Use Taxes".

(B)(i) Money reported as local sales and use taxes which was collected in local taxing jurisdictions which are not immediately identifiable and money collected in local jurisdictions which have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money which has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars (\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(C)(i) Money reported as local sales and use taxes, which was collected by an out-of-state vendor and which is not identifiable, shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes. Any such funds so deposited shall not be included for computation of transfer to general revenue in subdivision (a)(2)(B) of this section.

(ii) The Treasurer of State shall distribute unidentified local sales and use taxes collected by out-of-state vendors to the county treasurers and city treasurers as determined by their proportionate share of distribution from the Local Sales and Use Tax Trust Fund on a monthly basis.

(b)(1) The Treasurer of State as the administrator of the Local Sales and Use Tax Trust Fund shall review the flow of moneys through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2) After making the estimate, the administrator shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas. All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall monthly transmit to the county treasurers and city treasurers their proportionate share of the interest derived from investment of the Local Sales and Use Tax Trust Fund.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1; 1985, No. 1028, § 1; A.S.A. 1947, §§ 17-2038, 17-2046; Acts 1991, No. 621, § 1.

1985, No. 1028, § 1, are also codified as §§ 26-74-317, 26-75-223, and 26-75-318.

Publisher's Notes. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1;

Cross References. Local Sales and Use Tax Trust Fund for refund of taxes, § 19-5-934.

26-74-222. Levy of sales tax only.

(a) In any county having previously adopted a one percent (1%) countywide sales tax pursuant to this subchapter or § 26-74-301 et seq., which has not adopted a one percent (1%) countywide compensating use tax, the one percent (1%) countywide sales tax is levied and recognized to be in full force and effect as of the date of its adoption and previous levy by the county.

(b) The collection and distribution of funds collected pursuant to this section shall be pursuant to this subchapter or § 26-74-301 et seq., and the procedures thereunder.

History. Acts 1987, No. 826, §§ 1, 2.

Publisher's Notes. Acts 1987, No. 826, §§ 1, 2, are also codified as § 26-74-318.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Constitutional Law, 14 U. Ark. Little Rock L.J. 301.

26-74-223. Levy of compensating use tax.

(a) In all counties which adopt a local sales tax under the provisions of this subchapter or § 26-74-301 et seq., or which prior to September 4, 1987, have adopted a local sales tax under the provisions of this subchapter or § 26-74-301 et seq., there is also levied a local compensating use tax. The rate of use tax levied by this section shall be the same as that of the sales tax in the county.

(b) No additional tax shall be levied by this section when a use tax is otherwise levied under the provisions of §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-223, and 26-75-318.

(c) Any tax levied under the provisions of this section shall be levied, collected, and administered in accordance with the provisions of §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-223, and 26-75-318.

History. Acts 1987 (1st Ex. Sess.), No. 31, § 1. Sess.), No. 31, § 1, is also codified as § 26-74-319.

Publisher's Notes. Acts 1987 (1st Ex.

SUBCHAPTER 3 — SALES TAX FOR CAPITAL IMPROVEMENTS

SECTION.

- 26-74-301. Purpose.
- 26-74-302. Construction.
- 26-74-303. Definitions.
- 26-74-304. Issuance of bonds.
- 26-74-305. Voter approval of bonds.
- 26-74-306. Pledge of revenues.
- 26-74-307. Call for tax election.
- 26-74-308. Form of ballot.
- 26-74-309. Conduct of election and results — Challenges.
- 26-74-310. Abolition of tax.
- 26-74-311. Notification of results.
- 26-74-312. Administration, collection, etc., of tax.

SECTION.

- 26-74-313. Disposition of funds.
- 26-74-314. Rules and regulations.
- 26-74-315. Existing county sales taxes.
- 26-74-316. Levy of use tax in counties having sales tax.
- 26-74-317. Administration of Local Sales and Use Tax Trust Fund.
- 26-74-318. Levy of sales tax only.
- 26-74-319. Levy of compensating use tax.
- 26-74-320. Maximum tax limitation.
- 26-74-321. Procedures and penalties for enforcement.

Effective Dates. Acts 1981 (1st Ex. Sess.), No. 26, § 20: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the counties are faced with financial crises with reference to having sufficient tax resources to provide county services to

their inhabitants. That such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such counties. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the pub-

lic peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 278, § 5: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 991 of 1981 and Act 26 of the First Extraordinary Session of 1981 authorizing the levy of a one percent (1%) county sales tax are in need of clarification as regards the authority to levy such tax for a limited period of time; that some counties did levy a county sales tax for a specified period of time, and that such taxes should expire on the date approved by the voters; and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 513, § 2: Mar. 24, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that interest income from city and county sales and use tax funds held by the State is an urgent need of cities and counties. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1983, No. 725, § 10: Mar. 23, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that certain counties within the State are in dire need of additional capital funds to provide essential services and facilities of such counties; that the most appropriate way for such counties to provide such funds is by the levying of a sales tax on the gross receipts derived from certain business within the county and the issuance of bonds payable from such tax revenues as herein authorized; that this Act is needed and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 1028, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that unless this Act is given effect immediately, the taxpayers of the State of Arkansas will be severely burdened in a manner not intended by this General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 688, § 3: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that currently, in computing the per capita share that each city and county shall receive, that the latest census is used. It is further found and determined that this is creating confusion and unnecessary burden and expense on counties and other municipalities as they are being required to have new censuses conducted; that there is need for more stability in computing the sums due. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 826, § 4: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that counties and municipalities are experiencing difficult economics and the effect and applicability of various tax levies is in need of immediate clarification. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 2, § 2: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 688 of 1987 have resulted in financial hardship to a number of municipalities in this State, and that immediate clarification thereof is necessary to prevent a drastic reduction in essential services in such municipalities. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force

and effect from and after its passage and approval.”

Acts 1991, No. 621, § 8: Mar. 19, 1991. Emergency clause provided: “It is hereby found and determined that cities and counties are losing needed tax revenues because of the inability to identify taxes collected by out-of-state vendors to the appropriate taxing jurisdiction; that this Act is designed to remedy this problem by providing a mechanism to fairly identify and distribute these taxes to the cities and counties. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the public safety, health and welfare shall be in full force and effect on and after the date of its passage and approval.”

Acts 1991, No. 765, § 22: Mar. 26, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements of a public nature and to provide services to their inhabitants; that under current law the counties are restricted to a one percent (1%) levy and the cities are restricted to a one-half of one percent (0.05%) or one percent (1%) levy; that the ability to levy a sales and use tax computed on one-fourth of one percent, one-half of one percent, three-fourths of one percent, or one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval.”

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the ad-

ministrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 2001, No. 1560, § 8: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that legislation is needed for the collection and enforcement of certain county-wide sales and use taxes and that the immediate passage of this act is necessary for the Department of Finance and Administration to fulfill its duties with respect to such taxes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is

otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport Act are suffering material adverse consequences under current procedures; and

that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the development of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based businesses are dependent upon the State of Arkansas creating an environment that allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

CASE NOTES

Scope of Taxing Authority.

The state's taxing authority is much broader than the limited authority delegated to the counties under Act 991 of 1981, codified at § 26-74-301 et seq., and Act 26 of the First Extraordinary Session

of 1981, codified at § 26-74-201 et seq. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

26-74-301. Purpose.

(a) This subchapter is intended to supplement all constitutional provisions and other acts adopted for the acquiring, constructing, and equipping of capital improvements of a public nature and the issuance of bonds for the financing of a capital improvement of a public nature.

(b) When applicable in accordance with the provisions of this subchapter, this subchapter may be used by any county as an alternative notwithstanding and without the necessity of compliance with any constitutional provision or any other act authorizing the county, or any commission or agency of the county, to issue bonds for the purpose of financing the acquisition, construction, and equipment of capital improvements of a public nature.

(c)(1) This subchapter is intended to supplement and be levying authority in addition to all other statutes authorizing countywide sales and use taxes.

(2) Collections of a tax levied by this subchapter may be used to secure the payment of bonds or for any purpose for which the general fund of a municipality or county may be used, or a combination thereof, except as may be expressly limited by the ballot for the election at which the tax was approved or by the ballot for a subsequent election on the purposes for the tax.

History. Acts 1981, No. 991, § 16, as added by Acts 1983, No. 725, § 6; A.S.A. 1947, § 17-2020.4; Acts 2001, No. 1560, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-74-302. Construction.

This subchapter shall be liberally construed to accomplish the purposes of this subchapter.

History. Acts 1981, No. 991, § 16, as added by Acts 1983, No. 725, § 6; A.S.A. 1947, § 17-2020.4.

26-74-303. Definitions.

As used in this subchapter:

(1) "Acquire" means to obtain at any time, by gift, purchase, or other arrangement, any capital improvement of a public nature, or any portion of a capital improvement of a public nature, whether constructed and equipped before acquisition, partially constructed and equipped before acquisition, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the quorum court of the county shall determine;

(2) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(3) "Capital improvements of a public nature" means:

- (A) Streets;
 - (B) Roads;
 - (C) Public parks;
 - (D) Port facilities;
 - (E) Tourism facilities;
 - (F) Airport facilities;
 - (G) Sewerage facilities;
 - (H) Waterworks facilities;
 - (I) Fire protection facilities;
 - (J) Convention center facilities;
 - (K) Courthouses;
 - (L) Police facilities;
 - (M) Public transit facilities;
 - (N) Auditoriums;
 - (O) Prisons;
 - (P) Libraries;
 - (Q) Hospital and nursing home facilities;
 - (R) Solid waste facilities;
 - (S) Sanitation facilities;
 - (T) Bridges;
 - (U) Electric facilities;
 - (V) Hydroelectric facilities;
 - (W) Facilities for the securing and developing of industry;
 - (X) Natural gas facilities;
 - (Y) Parking facilities;
 - (Z) Public housing facilities;
 - (AA) Pollution control facilities;
 - (BB) Public education facilities;
 - (CC) Drainage facilities;
 - (DD) Pedestrian facilities;
 - (EE) Lakes;
 - (FF) Dams;
 - (GG) Waterways;
 - (HH) Regional mobility authority surface transportation systems;
- and

(II) Research parks;

(4) "Construct" means to build, in whole or in part, in such manner and by such method, including contracting to build and, if contracting to build, by negotiation or bidding upon such terms and pursuant to such advertising as determined by the quorum court of the county, under the circumstances existing at the time, as will most effectively serve the purposes of this subchapter;

(5) "Director" means the Director of the Department of Finance and Administration, any successor of the director, or any authorized agent of the director;

(6) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(7) "Facilities" means real, personal, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind;

(8) "Lease" means any lease of a capital improvement of a public nature by and between the county as lessee and a person as lessor; and

(9) "Sales tax" means the sales tax levied by a county pursuant to this subchapter or sales and use tax levied by a county pursuant to §§ 26-74-219 and 26-74-316.

History. Acts 1981, No. 991, § 13, as added by Acts 1983, No. 725, § 1; A.S.A. 1947, § 17-2020.1; Acts 1995, No. 565, § 16; 2005, No. 2275, § 3; 2007, No. 1045, § 5.

Amendments. The 2005 amendment added (HH) in present (3).

The 2007 amendment added (II) in (3), and made related changes.

26-74-304. Issuance of bonds.

(a) Counties levying the tax permitted in this subchapter are authorized, in addition to the authority existing under the laws of this state, to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a "project", within or near such counties and are authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues which the county is entitled to receive from the tax levied by such county pursuant to this subchapter to pay lease rentals, or principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a county pursuant to this subchapter shall be authorized by ordinance of the quorum court of the county. The bonds may:

(1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;

(2) Be exchangeable for bonds of another denomination;

(3) Be in such form and denominations;

- (4) Be made payable at such places within or without the state;
- (5) Be issued in one (1) or more series;
- (6) Bear such date or dates;
- (7) Mature at such time or times, not exceeding forty (40) years from their respective dates;
- (8) Bear interest at such rate or rates;
- (9) Be payable in such medium of payment; and
- (10) Be subject to such terms of redemption; and
- (11) Contain such terms, covenants, and conditions as the ordinance authorizing their issuance may provide including, without limitation, those pertaining to:

- (A) The custody, investment, and application of the proceeds of the bonds;

- (B) The collection and disposition of revenues;

- (C) The maintenance of various funds and reserves;

- (D) The nature and extent of the security and pledging of revenues;

- (E) The rights, duties, and obligations of the county and the trustee for the holders and registered owners of the bonds; and

- (F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the county clerk of the county, shall be filed with the Director of the Department of Finance and Administration and with the Treasurer of State.

(d) The bonds shall be executed by the county judge of the county and attested by the county clerk of the county, by their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the county judge. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the county issuing the bonds.

(e) The bonds shall not be general obligations of the county involved but shall be special obligations secured and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the county within the meaning of any constitutional or statutory

limitation. The principal of and interest on all bonds issued under the authority of this subchapter shall be secured by a pledge of, and shall be payable from, all or any part of the revenues derived from the tax levied by the county, and to which the county is entitled, pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by other laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues of such facilities. The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the county and the holders and registered owners of the bonds issued by the county under the authority of this subchapter, which contract, and all covenants, agreements, and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the county may be enforced by mandamus or by any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

(f) The ordinance authorizing the bonds may provide for the execution by the county with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the priority between and among successive issues and series, and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body, including, without limitation, those pertaining to:

(1) The custody, investment, and application of the proceeds of bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the county and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(g) Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of the sale. In either case, the bonds may be sold at such price as the county may accept, including sale at a discount.

(h) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the

state for any purpose for which the deposit of bonds or obligations of the state is authorized by law. Any municipality or county, or any board, commission, or other authority established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

(i) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(j) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1981, No. 991, § 14, as added by Acts 1983, No. 725, § 4; A.S.A. 1947, § 17-2020.2.

26-74-305. Voter approval of bonds.

No ordinance shall be passed by the quorum court of a county under § 26-74-304 until the majority of the qualified electors of the county voting on the question shall have approved, at an election called for that purpose and conducted in accordance with the general county election laws, the principal amount of the bonds and the purpose for which the bonds will be issued.

History. Acts 1981, No. 991, § 17, as added by Acts 1983, No. 725, § 7; A.S.A. 1947, § 17-2020.5.

26-74-306. Pledge of revenues.

Any county levying the tax as permitted in this subchapter is authorized to pledge all or any part of the revenues which the county is entitled to receive from the tax levied pursuant to this subchapter to the payment of lease rentals or principal of and interest on bonds issued by such county under the authority of any other law in effect for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature, or on bonds issued to refund such bonds, and such bonds, including the refunding bonds, shall be deemed to have been authorized by this subchapter for purposes of §§ 26-74-310 and 26-74-313.

History. Acts 1981, No. 991, § 15, as added by Acts 1983, No. 725, § 5; A.S.A. 1947, § 17-2020.3.

26-74-307. Call for tax election.

(a)(1) A county quorum court may call an election for the levy of a countywide sales tax in an amount of:

- (A) One-eighth of one percent (0.125%);
- (B) One-fourth of one percent (0.25%);
- (C) One-half of one percent (0.5%);
- (D) Three-fourths of one percent (0.75%);
- (E) One percent (1%); or
- (F) Any combination of these amounts.

(2) The election shall be held within one hundred twenty (120) days of the ordinance calling for the election.

(3) Each tax shall be adopted by ordinance and with approval of the voters of the county in accordance with this subchapter.

(b) The quorum court shall notify its county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ballot title to its county board of election commissioners.

History. Acts 1981, No. 991, §§ 1, 2; A.S.A. 1947, §§ 17-2010, 17-2011; Acts 1991, No. 765, § 10; 2001, No. 1560, § 6.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES**Notice.**

Where the official ballot and voting instructions used at a county-wide special election called for the voters to vote for or

against the adoption of a 1% sales tax pursuant to the provisions of Acts 1981, No. 991, as amended by Acts 1981, No. 26, First Extraordinary Session, but no men-

tion was made of a 1% compensating use tax, a subsequent attempt by the quorum court to impose a 1% use tax pursuant to the favorable vote at the special election was invalid, because the ballot title used at the special election did not mention a possible use tax nor were the references to

the acts of the legislature sufficient to put the voters on notice that they were also voting on a use tax. *Ragan v. Venhaus*, 289 Ark. 266, 711 S.W.2d 467 (1986).

Cited: *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

26-74-308. Form of ballot.

(a) The ballot title to be used shall be substantially in the following form:

"[] FOR adoption of a percent (.... %) sales and use tax within (Name of county)."

"[] AGAINST adoption of a percent (.... %) sales and use tax within (Name of county)."

(b)(1) The ballot title may also include an expiration date, and if adopted in this form the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax, and if the tax is approved, the proceeds shall be used only for the designated purposes.

(B) The county's share of the proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(2)(A) The quorum court of a county may refer to the vote of the people a change in the indicated use of revenues derived from a sales and use tax levied by the county that was approved by the voters, but a change shall not alter the allocation of tax collections among the county and municipalities within the county.

(B) If the quorum court of a county refers to the vote of the people a change in the indicated use of revenues derived from a sales and use tax, then the quorum court shall:

(i) Notify the county board of election commissioners that the measure has been referred to the vote of the people; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the indicated use of revenues derived from a sales and use tax shall be conducted in the manner provided by law for all other county elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-74-309.

(3) If the voters approve a change in the indicated use of revenues derived from a sales and use tax, the change in the indicated use shall apply to all revenues collected on the first day of the calendar month

following the expiration of the thirty-day challenge period under § 26-74-309.

(4)(A) If the voters do not approve a change in the indicated use of revenues derived from a sales and use tax, the tax shall continue to be collected and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the indicated use of revenues derived from a sales and use tax shall not constitute an election on the levy of the tax.

(5) Notwithstanding anything in this subchapter to the contrary, in any county that a local sales and use tax has been adopted in the manner provided for in this subchapter and a portion of the revenues derived from the tax has been pledged to secure lease rentals or bonds, the purpose for the tax may not be changed to reduce the pledge in favor of the lease or bonds.

History. Acts 1981, No. 991, § 3; 1983, No. 278, § 1; A.S.A. 1947, § 17-2012; Acts 1991, No. 765, § 11; 1995, No. 565, § 3; 2003, No. 1156, § 2; 2005, No. 1161, § 1.

Amendments. The 2003 amendment redesignated former (c) as present (c)(1)(A) and added (c)(1)(B) and (c)(2) through (c)(5).

The 2005 amendment substituted “sales and use tax” for “sales or use tax” throughout this section; added the commas in (c)(1)(A); inserted “county’s share of the” in (c)(1)(B); and, in (c)(2)(A), inserted “levied by the county” and “but a change ... within the county.”

CASE NOTES

ANALYSIS

Illegal Exaction.
Purpose of Tax.

Illegal Exaction.

Any use of sales tax revenues for purposes other than those designated by the levying ordinance and the ballot is an unconstitutional illegal exaction. *Daniel v.*

Jones, 332 Ark. 489, 966 S.W.2d 226 (1998).

Purpose of Tax.

Ark. Const., Art. 16, § 11, does not require the purpose of the tax to be stated in the ballot or county ordinance calling for the election when the tax is to be used for general purposes. *Oldner v. Villines*, 328 Ark. 296, 943 S.W.2d 574 (1997).

26-74-309. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b) When the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(c) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(d)(1) The county court shall notify the Director of the Department of Finance and Administration of the countywide tax after publication of

the proclamation has occurred and ninety (90) days before the effective date of the tax.

(2) If no election challenge is timely filed, the countywide tax shall be levied, effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day challenge period, on the gross receipts from the sale at retail within the county of all items and services that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(e)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (d) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the court and disposed of at the earliest practicable time.

History. Acts 1981, No. 991, §§ 4-6; A.S.A. 1947, §§ 17-2013 — 17-2015; Acts 1991, No. 765, § 12; 1993, No. 266, § 2; 1995, No. 565, § 4; 2003, No. 1273, § 39.

Publisher's Notes. Subsection (c) was held unconstitutional to the degree it granted jurisdiction to chancery courts over an election contest in *Pike v. Rice*, 297 Ark. 25, 759 S.W.2d 541 (1988). Amendment 80 to the Arkansas Constitution, adopted by voter referendum and effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matter previously cognizable by Circuit, Chancery, Probate and Juvenile Courts. ...".

Amendments. The 2003 amendment inserted (d)(1); redesignated former (d) as (d)(2); in present (d)(2), substituted "after a minimum of sixty (60) days' notice by the director to sellers and after" for "subsequent to," substituted "and services that" for "which" and added "and the Arkansas Compensating Tax Act of 1949, § 26-53-101."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss

of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed

date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of

the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

CASE NOTES

Constitutionality.

Since election contests must be filed in a law court, that part of subsection (c) of this section which attempts to grant chan-

cery court jurisdiction of an election contest is unconstitutional. *Pike v. Rice*, 297 Ark. 25, 759 S.W.2d 541 (1988) (decision under prior law).

26-74-310. Abolition of tax.

(a) In any county in which a local sales tax has been levied pursuant to this subchapter, and all or any portion pledged to secure lease rentals or the payment of bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be abolished so long as any of the lease is effective or such bonds are outstanding.

(b)(1) The county may abolish all or that portion of the sales tax that is not pledged to lease rentals or outstanding bonds after, and only after, an election called in the same manner as provided in § 26-74-307 or by a petition of the qualified voters of the county.

(2) As to such a petition of the qualified voters, the provisions of Arkansas Constitution, Amendment 7 shall govern.

(3) The ballot title for use in any such election shall be the same as indicated in § 26-74-308, except that the word "ABOLITION" shall be substituted for the word "ADOPTION" as it appears in the ballot title set forth in that section.

(4) The effective date of any affirmative vote to abolish such tax shall correspond to the dates indicated in § 26-74-309 for the initial effective date of such tax.

History. Acts 1981, No. 991, § 7; 1983, No. 278, § 2; 1983, No. 725, § 2; A.S.A. 1947, § 17-2016.

26-74-311. Notification of results.

(a) Within ten (10) days after the certification of the votes of any election resulting in the adoption or abolition of a tax levied pursuant to this subchapter and ninety (90) days before the effective date, the

county court shall notify the Director of the Department of Finance and Administration of the results.

(b) A rate change will become effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice by the director to sellers.

(c) A rate change on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog will be applicable beginning on the first day of a calendar quarter after a minimum of one hundred twenty (120) days' notice by the director to the sellers.

(d) For sales and use tax purposes only, a local boundary change will become effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice by the director to sellers.

History. Acts 1981, No. 991, § 8; A.S.A. 1947, § 17-2017; Acts 2003, No. 383, § 4; 2003, No. 1273, § 40.

Amendments. The 2003 amendment by No. 383 substituted "Director of the Department of Finance and Administration" for "director" and deleted "and furnish the director with a map clearly indicating the boundaries of the county and the boundaries of each incorporated area within the county" from the end.

The 2003 amendment by No. 1273 designated the former undesignated paragraph of the section as (a); added (b), (c) and (d); and, in present (a), inserted "and ninety (90) days before the effective date."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Taxation, Sales and Use Tax, 26 Legislation, 2003 Arkansas General As- U. Ark. Little Rock L. Rev. 498.

26-74-312. Administration, collection, etc., of tax.

(a) On and after the effective date of any tax imposed under the provisions of this subchapter, the Director of the Department of Finance and Administration shall perform all functions incidental to the administration, collection, enforcement, and operation of the tax.

(b) In addition to the state gross receipts tax, the director shall collect an additional tax under the authority of this subchapter on the gross receipts from the sale of all items and services that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) The tax imposed under this subchapter and the tax imposed under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the director not inconsistent with the provisions of this subchapter.

(2)(A) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his or her sales and use tax report.

(B) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(C) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) This subsection only applies to a tax collected by the director.

(d) On and after the effective date of any proposition to abolish a tax levied pursuant to this subchapter, the director shall comply with the proposition as provided in this subchapter.

History. Acts 1981, No. 991, § 9; A.S.A. 1947, § 17-2018; Acts 1997, No. 1176, § 6; 2003, No. 1273, § 41.

Amendments. The 2003 amendment, in (b), deleted “at retail within the county” following “from the sale,” inserted “and services,” added “and the Arkansas Compensating Tax Act, § 26-53-101 et seq.” and made stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss

of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agree-

ment. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-74-313. Disposition of funds.

(a) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and other subchapters authorizing county sales and use taxes in each county. The director shall determine the population of the unincorporated area of each of the counties and shall furnish the information to the Treasurer of State.

(b) Except as set forth in subsections (c) and (e) of this section, any tax collected by the director under this subchapter on behalf of any county shall be deposited with the Treasurer of State in trust and shall be kept in a separate suspense account.

(c) Any moneys collected by the director, as indicated by a certified copy of an ordinance of the quorum court of the county, previously filed with the director and the Treasurer of State, which are pledged to secure the payment of lease rentals or bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into banks designated by the county, as cash funds, and transmitted to the county subject to the charges payable to the State of Arkansas set forth in subsection (d) of this section. Charges deducted shall be transmitted to the Treasurer of State.

(d)(1) The Treasurer of State shall transmit to the treasurer or financial officer of each city and county its per capita share, after deducting the amount required for claims, overpayments, and bad checks, as certified by the director.

(2)(A) Except as is otherwise provided in subdivision (d)(8) of this section, the last official federal decennial census or later special census that included the county as a whole shall be used in computing the per capita share that each city and county shall receive from the proceeds of the tax. Every county that is petitioned by, and city or

town located in that county for, a countywide special census to be conducted shall request a countywide special census on the condition that the city or town requesting the census post adequate bond with the county clerk to cover the cost of the census. Further, the cost of conducting the census shall be borne by the several taxing units within the county in the same proportion that they will receive an increase in the distribution of a countywide sales tax as a result of the special census.

(B) However, in the case of those counties in which an official census has been conducted in a municipality therein since the last federal decennial census and before April 7, 1987, the proceeds from the countywide sales tax shall continue to be distributed in the manner and under the same formula as was used for the distribution of funds prior to April 7, 1987, until such time as a countywide census is conducted in that county.

(3) Transmittals shall be made at least quarterly in each fiscal year. Funds so transmitted may be used by the cities and counties for any purpose for which the city's general funds or county's general funds may be used. Before transmitting these funds, the Treasurer of State shall deduct three percent (3%) of the sum collected as a charge by the state for its services specified in this subchapter, and the amount so deducted shall be deposited by the Treasurer of State to the credit of the Constitutional Officers Fund and the State Central Services Fund or to any successor State Treasury fund or funds established by law to replace the Constitutional Officers Fund and the State Central Services Fund.

(4) The director is authorized to retain in the suspense account a balance not to exceed five percent (5%) of the amount remitted to the local governments. The director is authorized to make refunds from the suspense account of any overpayments made and to redeem dishonored checks and drafts deposited to the credit of the suspense account.

(5) When any tax adopted pursuant to this subchapter is thereafter abolished, the director shall retain in the suspense account for a period of one (1) year five percent (5%) of the final remittance to the local governments at the time of termination of collection of the tax to:

(A) Cover possible refunds for overpayment of the tax; and

(B) Redeem dishonored checks and drafts deposited to the credit of the suspense account.

(6) After one (1) year has elapsed after the effective date of the abolishment of the tax, the director shall remit the balance of the account to the governing bodies of the cities and counties and close the account.

(7) The restriction of the use of the last federal decennial census referred to in this subsection shall not apply in the case of annexation, nor shall it affect the taking of a special census for any purpose other than the distribution of a countywide sales tax.

(8) It is the intention of this subsection that the proceeds from the countywide gross receipts tax shall be allocated and distributed to each

county and the municipalities therein on the basis of the last federal decennial census or the last countywide special census, whichever is the most recent. However, in those counties in which one (1) or more municipalities had a special census before April 7, 1987, and the proceeds of the tax were distributed on the basis of the special census, the proceeds of the tax shall continue to be allocated and distributed in the same manner as those funds were distributed before April 7, 1987, until a special countywide census or a federal decennial census is conducted in the county.

(e)(1) Except for revenue collected under subdivision (e)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city and county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

History. Acts 1981, No. 991, § 10; 1983, No. 725, § 3; A.S.A. 1947, § 17-2019; Acts 1987, No. 688, § 1; 1987 (1st Ex. Sess.), No. 2, § 1; 1987 (1st Ex. Sess.), No. 56, § 1; 1991, No. 765, § 13; 1997, No. 1176, § 7; 2007, No. 166, § 3.

Publisher's Notes. Acts 1987 (1st Ex. Sess.), No. 56, was vetoed by the Governor. However, the Attorney General

opined that the veto was invalid on the grounds that the veto occurred after the expiration of the twenty-day period allowed by Ark. Const., Art. 6, § 15, and that the act became law on June 26, 1987. See Attorney General Opinion No. 87-241.

Amendments. The 2007 amendment substituted "subsections (c) and (e)" for "subsection (c)" in (b); and added (e).

CASE NOTES

Cited: Daniel v. Jones, 332 Ark. 489, 966 S.W.2d 226 (1998).

26-74-314. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1981, No. 991, § 11; A.S.A. 1947, § 17-2020.

Publisher's Notes. Acts 1981, No. 991

became law without the governor's signature on April 8, 1981.

26-74-315. Existing county sales taxes.

All county sales taxes adopted under the provisions of this subchapter which are in effect on December 1, 1981, shall remain in full force and effect and are not repealed by the provisions of § 26-74-201 et seq.

However, these taxes shall be administered in accordance with § 26-74-201 et seq. and this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. Sess.), No. 26, § 16, is also codified as 26, § 16; A.S.A. 1947, § 17-2036. § 26-74-218.

Publisher's Notes. Acts 1981 (1st Ex.

26-74-316. Levy of use tax in counties having sales tax.

In all counties which have, prior to December 1, 1981, adopted a local sales tax under the provisions of this subchapter, there is also levied a local compensation tax, which in all respects shall be administered and enforced in accordance with the provisions of § 26-74-201 et seq. and this subchapter and the ordinance levying the local sales tax.

History. Acts 1981 (1st Ex. Sess.), No. Sess.), No. 26, § 17, is also codified as 26, § 17; A.S.A. 1947, § 17-2037. § 26-74-219.

Publisher's Notes. Acts 1981 (1st Ex.

26-74-317. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created a trust fund for the remittance of local sales and use taxes which shall be known as the "Local Sales and Use Tax Trust Fund".

(2)(A) There is also created a trust fund which shall be known as the "Identification Pending Trust Fund for Local Sales and Use Taxes".

(B)(i) Money reported as local sales and use taxes which was collected in local taxing jurisdictions which are not immediately identifiable and money collected in local jurisdictions which have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money which has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars (\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(C)(i) Money reported as local sales and use taxes, which was collected by an out-of-state vendor and which is not identifiable, shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes. Any such funds so deposited shall not be included for computation of transfer to general revenue in subdivision (a)(2)(B) of this section.

(ii) The Treasurer of State shall distribute unidentified local sales and use taxes collected by out-of-state vendors to the county treasurers and city treasurers as determined by their proportionate share of distribution from the Local Sales and Use Tax Trust Fund on a monthly basis.

(b)(1) The Treasurer of State, as the administrator of the Local Sales and Use Tax Trust Fund shall review the flow of moneys through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2) After making the estimate, the administrator shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas. All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall monthly transmit to the county treasurers and city treasurers their proportionate share of the interest derived from investment of the Local Sales and Use Tax Fund.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1; 1985, No. 1028, § 1; A.S.A. 1947, §§ 17-2038, 17-2046; Acts 1991, No. 621, § 2.

1985, No. 1028, § 1, are also codified as §§ 26-74-221, 26-75-223, and 26-75-318.

Publisher's Notes. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1;

Cross References. Local Sales and Use Tax Trust Fund for refund of taxes, § 19-5-934.

26-74-318. Levy of sales tax only.

(a) In any county having previously adopted a one percent (1%) countywide sales tax pursuant to this subchapter or § 26-74-201 et seq., which has not adopted a one percent (1%) countywide compensating use tax, the one percent (1%) countywide sales tax is levied and recognized to be in full force and effect as of the date of its adoption and previous levy by the county.

(b) The collection and distribution of funds collected pursuant to this section shall be pursuant to this subchapter or § 26-74-201 et seq., and the procedures thereunder.

History. Acts 1987, No. 826, §§ 1, 2.

Publisher's Notes. Acts 1987, No. 826, §§ 1, 2, are also codified as § 26-74-222.

26-74-319. Levy of compensating use tax.

(a) In all counties which adopt a local sales tax under the provisions of this subchapter or § 26-74-201 et seq., or which prior to September 4, 1987, have adopted a local sales tax under the provisions of this subchapter or § 26-74-201 et seq., there is also levied a local compensating use tax. The rate of use tax levied by this section shall be the same as that of the sales tax in the county.

(b) No additional tax shall be levied by this section when a use tax is otherwise levied under the provisions of §§ 26-74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-223, and 26-75-318.

(c) Any tax levied under the provisions of this section shall be levied, collected, and administered in accordance with the provisions of §§ 26-

74-201 — 26-74-219, 26-74-221, 26-74-315 — 26-74-317, 26-75-223, and 26-75-318.

History. Acts 1987 (1st Ex. Sess.), No. 31, § 1. Sess.), No. 31, § 1, is also codified as § 26-74-223.

Publisher's Notes. Acts 1987 (1st Ex.

CASE NOTES

ANALYSIS

Constitutionality.

Classifications.

Scope of Taxing Power.

Constitutionality.

The exclusions outlined in this section prevent duplicate taxation in those counties that have imposed both the sales and use tax envisioned by prior legislation, and such an exclusion is neither arbitrary nor unreasonable. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

That a statute may ultimately affect less than all of the state's territory does not necessarily render it local or special. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Act 26 of the First Extraordinary Session of 1981, codified at § 26-74-201 et seq., as amended by Act 31 of the First

Extraordinary Session of 1987, codified at § 26-74-319, is not vague and contains no improper delegation of authority. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Classifications.

There was no impermissible classification established by the language of this section or its application, and the use tax did not impose different burdens on different classes of persons. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

Scope of Taxing Power.

A state's power to impose a use tax is not conferred. It inheres in the sovereign and is plenary. *City of Little Rock v. Waters*, 303 Ark. 363, 797 S.W.2d 426 (1990), questioned, *Barclay v. Waters*, 357 Ark. 386, 182 S.W.3d 91 (2004), overruled, *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998).

26-74-320. Maximum tax limitation.

(a)(1) Any county general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;

- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(b)(1) Each vendor who is liable for one (1) or more county sales or use taxes shall report a combined county sales tax and a combined county use tax on his or her sales and use tax report.

(2) The combined county sales tax is equal to the sum of all sales taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(3) The combined county use tax is equal to the sum of all use taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(c) This section applies only to taxes collected by the Director of the Department of Finance and Administration.

History. Acts 2001, No. 1560, § 1; 2003, No. 1273, § 42.

Amendments. The 2003 amendment twice substituted "on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes" for "from a single transaction" following "or sales price" in present (a); deleted former (b); and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given.

These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-74-321. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any local tax imposed pursuant to this subchapter shall be the same as for the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., as set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any city or county under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from the sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the city or county.

History. Acts 2001, No. 1560, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

SUBCHAPTER 4 — SALES AND USE TAX FOR COUNTIES WITHOUT EXISTING TAX

SECTION.	SECTION.
26-74-401. Definitions.	26-74-409. Disposition of funds.
26-74-402. Call for tax election.	26-74-410. Rules and regulations.
26-74-403. Form of ballot.	26-74-411. Procedures and penalties for enforcement.
26-74-404. Conduct of election and results — Challenges.	26-74-412. Maximum tax limitation.
26-74-405. Resubmission of question of levy.	26-74-413. Administration of Local Sales and Use Tax Trust Fund.
26-74-406. Notification of results.	26-74-414. Limit on combined total sales and use tax levy.
26-74-407. Applicability of tax.	
26-74-408. Rebates.	

Effective Dates. Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 1999, No. 1137, § 12: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of Act 1176 of 1997 were intended to encourage the establishment of uniform definitions of the term 'single transaction' in connection with the levy and collection of local sales and use taxes. However, since the procedures established by the provisions of Act 1176 have caused confusion and have resulted in inconsistent applications of the procedures for adoption of local sales and use taxes, the interests of a number of cities and counties who have otherwise complied fully with the provisions of Arkansas law may be prejudiced. This is a result never intended by the General Assembly and which could result in financial hardships and the reduction of services provided by Arkansas cities and counties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section

of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport

Act are suffering material adverse consequences under current procedures; and that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-74-401. Definitions.

As used in this subchapter:

(1) “Calendar quarter” means the three-month period beginning on January 1, April 1, July 1, or October 1; and

(2) “Director” means the Director of the Department of Finance and Administration, or any successor thereof, or any authorized agent thereof.

History. Acts 1991, No. 885, § 1; 1995, No. 565, § 17.

26-74-402. Call for tax election.

(a) The county quorum court of any county not having a countywide one percent (1%) sales and use tax on March 14, 1991, may call an election for the levy of a one-half percent (0.5%) countywide sales and use tax for any purpose for which the county general fund or county road fund may be used including allocating portions of this tax to the municipalities located therein. The election shall be held within one hundred twenty (120) days of the ordinance calling the election.

(b) The quorum courts shall notify their respective county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ballot title to their respective boards.

History. Acts 1991, No. 885, § 1.

26-74-403. Form of ballot.

(a) The ballot title to be used shall be substantially in the following form:

“[] FOR adoption of a one-half percent (0.5%) sales and use tax within (Name of county).”

[] AGAINST adoption of a one-half percent (0.5%) sales and use tax within (Name of county).”

(b) The ballot title may also include an expiration date for the levy of the tax, and if adopted in this form the tax shall cease to be levied on the date noted on the ballot.

(c) Any tax adopted for a specified period of time shall cease to be levied on the date indicated on the ballot.

History. Acts 1991, No. 885, § 1.

26-74-404. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b) When the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(c) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(d)(1) The county court shall notify the Director of the Department of Finance and Administration of the tax after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(2)(A) If no election challenge is timely filed, there shall be levied, effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day challenge period, a one-half percent (0.5%) tax on the gross receipts from the sale of all items that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(B) In every county where the local sales and use tax has been adopted pursuant to the provisions of this subchapter, there is imposed an excise tax on the storage, use, distribution, or consumption within the county of tangible personal property and services purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the county at a rate of one-half percent (0.5%) of the sale price of the property and services or in the case of leases or rentals of the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(3) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(e)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (d) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the courts and disposed of at the earliest feasible time.

History. Acts 1991, No. 885, § 1; 1993, No. 266, § 3; 1995, No. 565, § 5; 2003, No. 1273, § 43.

Amendments. The 2003 amendment added (d)(1); redesignated former (d) as (d)(2) and (d)(3); and, in present (d)(2), substituted "after a minimum of sixty (60) days' notice by the director to sellers and after" for "subsequent to," deleted "at retail within the county" following "the sale," inserted "and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq." following "§ 26-52-101 et seq.," twice inserted "and services" following "property" and made minor stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the re-

quirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-405. Resubmission of question of levy.

When the question of the levy of a county sales and use tax is submitted to the electors and the proposition is defeated, the question shall not again be submitted to the electors by ordinance of the quorum court of the county at a special or general election for a period of one (1) year from the date the proposition was last voted upon.

History. Acts 1991, No. 885, § 1.

26-74-406. Notification of results.

(a) Within ten (10) days after the certification of the votes of any election resulting in the adoption of a tax levied pursuant to this subchapter and ninety (90) days before the effective date of the rate change, the county court shall notify the Director of the Department of Finance and Administration of the results.

(b) A rate change will become effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice by the director to sellers.

(c) A rate change on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog will be applicable beginning on the first day of a calendar quarter after a minimum of one hundred twenty (120) days' notice by the director to the sellers.

(d) For sales and use tax purposes only, a local boundary change will become effective only on the first day of a calendar quarter after a minimum of sixty (60) days' notice by the director to sellers.

History. Acts 1991, No. 885, § 1; 2003, No. 1273, § 44.

Amendments. The 2003 amendment added the subsection (a) designation; substituted "and ninety (90) days before" for "prior to" and made minor stylistic changes in present (a); and added subsections (b), (c) and (d).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and

Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules,

regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses

additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-407. Applicability of tax.

A county sales tax levied pursuant to the authority granted in this subchapter or in § 26-74-301 et seq. shall be applicable to sales of items and services sold by a business and shall be administered under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1991, No. 885, § 1; 2003, No. 1273, § 45.

Amendments. The 2003 amendment rewrote this section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a spe-

cific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of

the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date

provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-408. Rebates.

(a) A county shall provide in its ordinance authorized by this subchapter a rebate from the county for taxes collected pursuant to this subchapter in excess of two thousand five hundred dollars (\$2,500) of the gross receipts, gross proceeds, or sales price on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; or
- (6) Mobile home.

(b)(1) When a rebate would be due pursuant to the provisions of this subchapter as a result of the purchase of a new or used motor vehicle and when the tax on the new or used motor vehicle is collected directly from the purchaser pursuant to the provisions of § 26-52-510, then the Director of the Department of Finance and Administration shall collect only the amount of tax due less the amount to which the purchaser would be entitled under the rebate provisions of this subchapter.

(2) When the rebate is credited against tax paid as set out in this subsection, then no other rebate of the tax shall be given.

History. Acts 1991, No. 885, § 1; 2003, No. 1273, § 46.

Amendments. The 2003 amendment substituted "two thousand five hundred dollars (2,500) of the gross receipts, gross proceeds, or sales price on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes" for "twenty-five dollars (\$25.00) paid to the county on a single transaction" in (a).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the play-

ing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and

Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first

day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-74-409. Disposition of funds.

(a)(1) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and all other subchapters authorizing a county sales and use tax in each county and shall deposit all such revenues with the Treasurer of State.

(2)(A) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) thereof as a charge by the state for its services as specified in this subchapter and shall credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund.

(B) In addition, the Treasurer of State is authorized to retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(i) Make remittances to the county for rebates made by the county for taxes in excess of amounts specified by the particular county ordinances paid by a taxpayer on a single transaction;

(ii) Make refunds for overpayment of the taxes; and

(iii) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(3) Furthermore, the Treasurer of State shall determine which cities or towns within the county do not levy a local sales tax and remit to those cities or towns a percentage of the tax based upon the population of the city or town versus the population of the county.

(b)(1) Except as set forth in subsection (g) of this section, all funds received by the Treasurer of State from the sales tax levied by each county, after deducting the amounts required by subsection (a) of this section, shall be credited to the account of the county where collected.

(2)(A) The Treasurer of State shall monthly transmit to the county treasurer the moneys received by the Treasurer of State from the sales tax levied by such county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(B) The county treasurer of any county which has levied a sales tax pursuant to this subchapter and which rebates taxes paid on a single transaction in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(c) Funds received by the counties pursuant to the provisions of this subchapter may be used by the counties for any purpose for which the county general fund or county road fund may be used, including allocating portions to municipalities located therein.

(d) The Treasurer of State is authorized to make refunds for overpayment of the county sales tax and to redeem dishonored checks and drafts issued in payment of the county sales tax from the Local Sales and Use Tax Trust Fund.

(e) When any tax adopted by a county pursuant to this subchapter ceases, the director shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the county and municipalities therein at the time of termination of the collection of the tax to:

- (1) Cover possible rebates by the county;
- (2) Cover refunds for overpayment of taxes; and
- (3) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(f) After one (1) year has elapsed after the tax ceases in any county, the director shall transfer the balance in that county's account to the county and shall close the account.

(g)(1) Except for revenue collected under subdivision (g)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this section.

History. Acts 1991, No. 885, § 1; 1997, No. 1176, § 8; 2007, No. 166, § 4. inserted "Except ... of this section"; and added (g).

Amendments. The 2007 amendment

26-74-410. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the administration, collec-

tion, enforcement, and operation of the taxes authorized in this subchapter.

History. Acts 1991, No. 885, § 1.

26-74-411. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any local tax imposed pursuant to this subchapter shall be the same as for the state gross receipts tax and compensating tax, as set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any county under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from such sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the county.

History. Acts 1991, No. 885, § 1.

26-74-412. Maximum tax limitation.

(a)(1)(A) Any county general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (i) Motor vehicle;
- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or
- (vi) Mobile home.

(B) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (i) Motor vehicle;
- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or

(vi) Mobile home.

(2) A vendor collecting, reporting, and remitting the county sales or use taxes shall show county sales taxes as a separate entry on the tax report form filed with the Director of the Department of Finance and Administration.

(b)(1) In the case of any taxpayer not subject to the levy of a use tax on tangible personal property or taxable services brought into the State of Arkansas for storage until such property is subsequently initially used in the State of Arkansas, a county use tax shall be computed on each purchase of such property and services by the taxpayer as if all the property was subject upon purchase to the county use tax up to the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) The taxes so computed shall be aggregated on a monthly basis, and the aggregate monthly amount shall be divided by the sum of the total purchases of such property on which the taxes are computed, and the quotient shall be multiplied by the amount of the taxpayer's property subsequently initially used and subject to levy of a use tax within the county during the month for which the monthly aggregate tax figure was computed, and the product shall be the amount of county use tax liability for the taxpayer for the month computed.

History. Acts 1991, No. 885, § 1; 1997, No. 1176, § 9; 1999, No. 1137, § 4; 2003, No. 1273, § 47.

Publisher's Notes. Acts 1999, No. 1137, § 8, provided: "It is the express intent of the General Assembly that this act be applied retroactively to any city or county ordinance adopted after January 1, 1998, as it is remedial and procedural in nature."

Amendments. The 2003 amendment rewrote this section.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the

undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The

governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax

Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-413. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created a trust fund for the remittance of local sales and use taxes which shall be known as the "Local Sales and Use Tax Trust Fund".

(2)(A) There is also created a trust fund which shall be known as the "Identification Pending Trust Fund for Local Sales and Use Taxes".

(B)(i) Money reported as local sales and use taxes which was collected in local taxing jurisdictions which are not immediately identifiable and money collected in local jurisdictions which have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money which has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars (\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(b)(1) The Treasurer of State as the administrator of the Local Sales and Use Tax Trust Fund shall review the flow of moneys through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2) After making the estimate, the administrator shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas. All interest

income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall monthly transmit to the county treasurers and city treasurers their proportionate share of the interest derived from investment of the Local Sales and Use Tax Trust Fund.

History. Acts 1991, No. 885, § 1.

26-74-414. Limit on combined total sales and use tax levy.

(a) Notwithstanding any other laws granting counties authority to levy sales and use taxes, no county levying a tax pursuant to this subchapter shall have authority to levy combined total sales and use taxes at a rate greater than two percent (2%).

(b) If any county levying a one-half percent (0.5%) tax under the authority of this subchapter subsequently levies any additional sales and use taxes under authority of any other law, the net revenues derived from any such additional levy or levies shall be allocated and distributed to the county and the municipalities in the county on a per capita basis in the manner provided in § 26-74-313.

History. Acts 1991, No. 885, § 1.

SUBCHAPTER 5 — SALES TAX ON FOOD AND LODGING

SECTION.

26-74-501. Levy of tax.

26-74-502. Petitions requesting an election.

26-74-503. Payment and collection — Advertising and Promotion Commission.

SECTION.

26-74-504. Pledge of revenues.

26-74-505. Cessation of tax levy.

RESEARCH REFERENCES

A.L.R. Hotel-motel room occupancy tax.
58 A.L.R.4th 274.

26-74-501. Levy of tax.

Any county which does not levy a tax under § 14-20-112, county gross receipts tax on hotels and restaurants, and where there is not located a city which levies a tax under § 26-75-602 or § 26-75-701, by either an ordinance of the county quorum court or through petition pursuant to § 26-74-502(a) may levy a tax in the amount necessary for the payment of bonds issued or indebtedness incurred by the county public facilities board for the purposes prescribed in this subchapter, but in no event to

exceed two percent (2%) upon the gross receipts or gross proceeds from either or both of the following:

(1) Gross receipts or gross proceeds from the renting, leasing, or otherwise furnishing of hotel, motel, or short term condominium rental accommodations for sleeping, meeting, or party room facilities for profit in such city, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and

(2) Portions of gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, and similar businesses as shall be defined in the levying ordinance, from the sale of prepared food and beverages for on-premises or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of fraternal organizations qualified under 26 U.S.C. § 501(c)(3).

History. Acts 1991, No. 1091, § 1; 1992 (1st Ex. Sess.), No. 46, § 1.

Cross References. Alternative local sales and use tax, § 26-73-113 et seq.

26-74-502. Petitions requesting an election.

(a) If petitions are filed requesting an election for an initiated ordinance levying the tax authorized under this subchapter, the quorum court shall submit the question of the levying of the tax to the electors. The petitions must be signed by not less than five hundred (500) electors of the county. The election shall be held within one hundred twenty (120) days of the filing of the petitions. The tax shall be levied upon approval of a majority of the qualified electors voting on the issue at the election.

(b) If petitions requesting a referendum election are filed, the quorum court levying a tax under this subchapter shall submit the question of the levying of the tax to the electors. The petitions must be signed by not less than five hundred (500) electors of the county and must be filed with the quorum court within thirty (30) days after the adoption of the ordinance levying the tax.

History. Acts 1991, No. 1091, § 2; 1992 (1st Ex. Sess.), No. 46, § 2.

26-74-503. Payment and collection — Advertising and Promotion Commission.

(a)(1) In any county levying a tax as authorized in this subchapter, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the advertising and promotion commission of the levying county or by a designated agent of the advertising and promotion commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) The advertising and promotion commission or its designated agent shall transmit monthly to the county public facilities board the revenues collected to be used as prescribed in this subchapter.

(b)(1) The person paying the tax shall report and remit the tax upon forms provided by the advertising and promotion commission and as directed by the advertising and promotion commission.

(2) The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., so far as practicable shall be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter. However, the administration and enforcement and all actions shall be by and in the name of the advertising and promotion commission through the proper advertising and promotion commission officials or agents.

(c) Any county levying a tax as authorized in this subchapter shall create a county advertising and promotion commission to be composed of seven (7) members, as follows:

(1) Four (4) members shall be owners or managers of businesses in the tourism industry, at least three (3) of whom shall be owners or managers of hotels, motels, or restaurants, and all of whom shall be appointed by the governing body of the county for staggered terms of four (4) years;

(2) Two (2) members of the advertising and promotion commission shall be members of the governing body of the county and selected by the governing body; and

(3) One (1) member shall be from the public at large and shall be nominated by the county judge and approved by the governing body of the county for a term of four (4) years.

(d) In any county which levies a tax as authorized in this subchapter and creates a advertising and promotion commission as provided in this section, the four (4) tourism industry representatives appointed by the governing body of the county at the first meeting of the advertising and promotion commission shall draw lots for terms so that:

(1) One (1) of the members will serve for a term of one (1) year;

(2) One (1) shall serve for a term of two (2) years;

(3) One (1) shall serve for a term of three (3) years; and

(4) One (1) shall serve for a term of four (4) years.

History. Acts 1991, No. 1091, § 3.

26-74-504. Pledge of revenues.

Revenues produced from the tax levied under this subchapter are hereby pledged to the payment of principal of and interest on bonds issued or other indebtedness incurred by the county public facilities board for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of wildlife management areas or public recreational facilities, including funds used to match federal funds or to purchase land for

the construction of fishing lakes or wildlife management areas by the Arkansas State Game and Fish Commission.

History. Acts 1991, No. 1091, § 4.

26-74-505. Cessation of tax levy.

Any tax levied under this subchapter shall cease to be collected when the indebtedness has been paid or redeemed. It is recognized that the tax cannot practically be stopped at the exact time the indebtedness is paid or redeemed, so nominal excess may result. Therefore, any surplus shall be transferred to the county general fund.

History. Acts 1991, No. 1091, § 5.

SUBCHAPTER 6 — SALES AND USE TAX FOR CAPITAL IMPROVEMENTS OF A COMMUNITY COLLEGE

SECTION.

- 26-74-601. Definitions.
- 26-74-602. Dissolution of district.
- 26-74-603. Call for tax election.
- 26-74-604. Form of ballot.
- 26-74-605. Conduct of election and results — Challenges.
- 26-74-606. Abolishment of tax.
- 26-74-607. Notification of results.
- 26-74-608. Applicability of tax.
- 26-74-609. Disposition of funds.

SECTION.

- 26-74-610. Rules and regulations.
- 26-74-611. Procedures and penalties for enforcement.
- 26-74-612. Maximum tax limitation.
- 26-74-613. Administration of Local Sales and Use Tax Trust Fund.
- 26-74-614. Limit on combined total sales and use tax levy.
- 26-74-615. Supplemental nature of the subchapter.

Effective Dates. Acts 2001, No. 1796, § 2: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the General Assembly that a more efficient management of the public higher education resources of the State of Arkansas may be accomplished by allowing community colleges designated or recognized by law as having authority to offer selected baccalaureate degrees and a public university or university system and their boards of trustees to merge or consolidate on a voluntary basis and that legislation is needed to provide for capital improvements to or maintenance and operation of, such community college which is the subject of pending mergers into four-year institutions or a university system pursuant to which the community college will become an eligible campus; and that this legislation should take effect immediately to permit community colleges currently or hereafter designated or recognized by the

General Assembly as having authority to offer selected baccalaureate degrees and a university or university system to better plan for and implement mergers of their institutions. Therefore, in order to further the operational efficiencies of public institutions of higher education and increased educational opportunities for the citizens of the state, an emergency is declared to exist and this subchapter being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: "This act

shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on

October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 181, § 45: Jan. 1, 2008.

26-74-601. Definitions.

As used in this subchapter:

- (1) “Calendar quarter” means the three-month period beginning on January 1, April 1, July 1, or October 1;
- (2) “Director” means the Director of the Department of Finance and Administration, any successor of the director, or any authorized agent of the director;
- (3) “District” means any community college district formed pursuant to Arkansas Constitution, Amendment 52, and applicable law and composed of the territory of an eligible county;
- (4) “Eligible campus” means the campus of any community college located in an eligible county that has merged into a qualified university;
- (5) “Eligible county” means any county the territory of which constitutes a community college district created pursuant to Arkansas

Constitution, Amendment 52, and applicable law, which community college is currently or in the future designated or recognized by the General Assembly as having authority to offer selected baccalaureate degrees and is to be or is being merged into a qualified university, and which district has in effect at the time of the merger an ad valorem tax levied pursuant to Arkansas Constitution, Amendment 52, and applicable law, for the support of the community college;

(6) "Local board" means the governing board of the community college located in the district that has entered into an agreement of merger with a qualified university pursuant to which the local board shall become an advisory board for the eligible campus;

(7) "Qualified university" means any public four-year institution of higher education or university system into which a community college included within a district is being or is to be merged; and

(8) "Tax" means the sales and use tax levied under this subchapter.

History. Acts 2001, No. 1796, § 1.

26-74-602. Dissolution of district.

(a) As an alternative to the method for dissolution of a district set forth in § 6-61-519(b), the question of dissolving the district and repealing the millage tax may be authorized by the affirmative vote of a majority of the members of the local board of the community college and submitted to the electors of the district at a special or general election called by ordinance of the quorum court of the county in which the district is located.

(b) The dissolution of the district and repeal of the millage tax may be made contingent upon the electors levying a countywide sales and use tax pursuant to this subchapter.

(c) The question of dissolving the district, repealing the millage tax, and levying the countywide sales and use tax shall be subject to approval by a majority of the qualified electors of the district voting on the question at the election.

History. Acts 2001, No. 1796, § 1.

26-74-603. Call for tax election.

(a) Any eligible county may by ordinance of its quorum court levy a countywide sales and use tax in the amount of one-eighth of one percent (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), or one percent (1%) to provide capital improvements to or the maintenance and operation of an eligible campus.

(b)(1) No ordinance shall be adopted by the quorum court of an eligible county for the purpose of levying a tax under this subchapter unless the quorum court shall have been requested to adopt the ordinance by the local board and until a majority of the qualified

electors of the eligible county voting on the question at a special election shall have approved levy of the tax.

(2) The election shall be called by ordinance and proclamation issued in accordance with § 7-5-103(b).

(3) The ballot for the election shall be subject to the approval of the local board.

(c) The quorum court shall notify its county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ordinance calling the election and the proposed ballot language to its county board of election commissioners.

History. Acts 2001, No. 1796, § 1; 2005, No. 2145, § 69; 2007, No. 1049, § 91.

Amendments. The 2005 amendment redesignated former (b) as present (b)(1); and added (b)(2).

The 2007 amendment, in (b)(1), substituted “special election” for “general or

special election” in (A), and substituted “proclamation issued in accordance with § 7-5-103(b)” for “shall be held no earlier than thirty (30) days after the adoption of the ordinance” in (B); and rewrote (b)(2).

26-74-604. Form of ballot.

(a) The ballot for the election shall be substantially in the form and of the content as shall be determined by the quorum court of the eligible county.

(b) In addition to the question of the levy of the tax, the ballot at the request of the local board may provide for the dissolution of the district pursuant to the merger of the community college into the qualified university.

(c)(1) The ballot may provide for an effective date for the levy of the tax in accordance with § 26-74-605(g) for termination or reduction of the tax after a specified period and for restrictions on the power to repeal or reduce the tax, provided that the agreement for merger is entered into in reliance on such restrictions.

(2) The period for which the tax cannot be repealed or reduced shall not exceed thirty (30) years.

History. Acts 2001, No. 1796, § 1.

26-74-605. Conduct of election and results — Challenges.

(a) The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified in this subchapter.

(b)(1) Notice of the election shall be given by the county clerk by one (1) publication in a newspaper having a general circulation within the eligible county not less than ten (10) days prior to the election.

(2) No other publication or posting of a notice by any other public official shall be required.

(c) When the election results have been certified, the county judge shall immediately issue a proclamation declaring the results of the

election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the eligible county.

(d) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the eligible county within thirty (30) days after the date of publication of the proclamation.

(e)(1)(A) If no election challenge is timely filed, there shall be levied effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the Director of the Department of Finance and Administration to sellers and subsequent to the expiration of the thirty-day challenge period a countywide tax on the gross receipts from the sale at retail within the eligible county of all items that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(B) Furthermore, in every eligible county where the local sales and use tax has been adopted pursuant to the provisions of this subchapter, there is imposed an excise tax on the storage, use, distribution, or consumption within the eligible county of taxable services and tangible personal property purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the eligible county at the same rate as on the sale price of the property or in the case of leases or rentals of the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(2) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(f)(1) In the event of an election challenge, the tax shall be collected as prescribed in subsection (e) of this section unless enjoined by a court order.

(2) A hearing involving this litigation shall be advanced on the docket of the courts and disposed of at the earliest feasible time.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the effective date of the levy of the tax may be delayed beyond the effective date as set forth in subsection (e) of this section to a date to be determined as set forth in the ballot, which date must be the first day of a calendar quarter.

History. Acts 2001, No. 1796, § 1; 2003, No. 1273, § 48.

Amendments. The 2003 amendment, in (e), inserted "after a minimum of sixty (60) days' notice by the Director of the Department of Finance and Administration to sellers and" and "taxable services and."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Ef-

fective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agree-

ment. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agree-

ment if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-74-606. Abolishment of tax.

(a) Subject to the restriction on the ballot for the levy of the tax as set forth in § 26-74-604, the tax shall expire only after a majority of electors voting on the question have approved the abolishment of the tax.

(b) The termination date shall be the last day of a calendar quarter determined by using the provisions of § 26-74-605(c)-(e) as if the tax were being approved.

History. Acts 2001, No. 1796, § 1.

26-74-607. Notification of results.

Within ten (10) days after the certification of the votes of any election resulting in the adoption or abolition of a tax levied pursuant to this subchapter and ninety (90) days before the effective date of the tax, the county judge shall notify the Director of the Department of Finance and Administration of the results.

History. Acts 2001, No. 1796, § 1; 2003, No. 1273, § 49.

Amendments. The 2003 amendment inserted "and ninety (90) days before the effective date of the tax" following "this subchapter."

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Ef-

fective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for

Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the

Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-608. Applicability of tax.

(a)(1) A tax levied pursuant to the authority granted in this subchapter shall be applicable to sales of items and services sold by a business, and the tax shall be administered under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) When a direct pay permit holder purchases tangible personal property or taxable services either from an Arkansas or out-of-state vendor for use, storage, consumption, or distribution in Arkansas, the permit holder shall accrue and remit the county sales or use tax, if any, pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

History. Acts 2001, No. 1796, § 1; 2003, No. 374, §§ 3, 4; 2003, No. 1273, § 50; 2007, No. 181, § 43.

Amendments. The 2003 amendment by No. 374 rewrote (a)(1); and made stylistic changes.

The 2003 amendment by No. 1273 rewrote (a)(1); deleted former (a)(2) and (b); redesignated former (c)(1) as (b); and deleted former (c)(2).

The 2007 amendment substituted "pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522" for "of the county where the property or services are first used, stored, consumed or distributed" in (b).

Effective Dates. Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month

following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a

state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

Acts 2007, No. 181, § 45, provided: “Section 1 through 43 of this act are effective on January 1, 2008.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-74-609. Disposition of funds.

(a)(1) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and all other subchapters authorizing a county sales and use tax in each eligible county and shall deposit all such revenues with the Treasurer of State.

(2)(A) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) of the funds as a charge by the state for its services as specified in this subchapter and shall credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund.

(B) In addition, the Treasurer of State may retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each eligible county, to be used by the Treasurer of State to:

(i) Make refunds for overpayment of the taxes; and

(ii) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(b)(1) All funds received by the Treasurer of State from the tax levied by each eligible county after deducting the amounts required by subsection (a) of this section shall be credited to the account of the eligible county in which collected.

(2) The Treasurer of State shall transmit monthly to the county treasurer the moneys received by the Treasurer of State from the sales tax levied by the eligible county and credited to the account of the eligible county in the Local Sales and Use Tax Trust Fund.

(c) Within a reasonable time after receipt by the eligible county, all collections of the tax shall be transmitted to the qualified university and applied to the capital improvements to or the operation and maintenance of the eligible campus.

(d) The Treasurer of State may make refunds for overpayment of the county sales tax and to redeem dishonored checks and drafts issued in payment of the county sales tax from the Local Sales and Use Tax Trust Fund.

(e) When any tax adopted by an eligible county pursuant to this subchapter ceases, the director shall retain in the account of that eligible county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the eligible county at the time of termination of the collection of the tax to:

(1) Cover refunds for overpayment of taxes; and

(2) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(f) After one (1) year has elapsed after the tax ceases in any eligible county, the director shall transfer the balance in that eligible county's account to the eligible county and shall close the account.

History. Acts 2001, No. 1796, § 1.

26-74-610. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the administration, collection, enforcement, and operation of the taxes authorized in this subchapter.

History. Acts 2001, No. 1796, § 1.

26-74-611. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any tax imposed pursuant to this subchapter shall be the same as for the state gross receipts tax and the state compensating tax, as set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any eligible county under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from the sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the eligible county.

History. Acts 2001, No. 1796, § 1.

26-74-612. Maximum tax limitation.

(a)(1) Any county general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(b) A vendor collecting, reporting, and remitting the tax shall show the tax as a separate entry on the tax report form filed with the Director of the Department of Finance and Administration.

History. Acts 2001, No. 1796, § 1; 2003, No. 1273, § 51.

Amendments. The 2003 amendment redesignated former (a)(1) as (a); twice substituted “on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes” for “from a single transaction” in present (a); redesignated former (a)(2) as (b); and deleted former (b)(1) through (b)(5).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given.

These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-74-613. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund for the remittance of local sales and use taxes that shall be known as the “Local Sales and Use Tax Trust Fund”.

(2)(A) There is also created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund which shall be known as the “Identification Pending Trust Fund for Local Sales and Use Taxes”.

(B)(i) Money reported as local sales and use taxes that was collected in local taxing jurisdictions that are not immediately identifiable and money collected in local jurisdictions that have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money that has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars (\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(b)(1) As the administrator of the Local Sales and Use Tax Trust Fund, the Treasurer of State shall review the flow of money through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2)(A) After making the estimate, the Treasurer of State shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas.

(B) All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall transmit monthly to the county treasurer the county's proportionate share of the interest derived from investment of the Local Sales and Use Tax Trust Fund.

History. Acts 2001, No. 1796, § 1.

26-74-614. Limit on combined total sales and use tax levy.

Notwithstanding any other law granting a county authority to levy sales and use taxes, no eligible county levying a tax pursuant to this subchapter shall have authority to levy such a tax if the effect of the levy of the tax is to cause the rate of the combined total sales and use taxes of the eligible county to exceed three percent (3%).

History. Acts 2001, No. 1796, § 1.

26-74-615. Supplemental nature of the subchapter.

This subchapter shall be supplemental to all other laws authorizing counties to levy sales and use taxes to operate and maintain and provide capital improvements for public institutions of higher education.

History. Acts 2001, No. 1796, § 1.

CHAPTER 75

MUNICIPAL SALES AND USE TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SALES AND USE TAX FOR CAPITAL IMPROVEMENTS.
3. SALES TAX FOR CAPITAL IMPROVEMENTS.
4. TEMPORARY TAX FOR ACQUISITION, CONSTRUCTION, OR IMPROVEMENT OF PARKS.
5. GROSS RECEIPTS TAX GENERALLY.
6. ADVERTISING AND PROMOTION COMMISSION ACT.
7. GROSS RECEIPTS TAX ON HOTELS, ETC., IN CERTAIN CITIES.
8. AIRPORT PREMISES.

Cross References. Vending Devices,
§ 26-57-1201 et seq.

RESEARCH REFERENCES

A.L.R. Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.

Applicability of sales or use taxes to motion pictures and video tapes. 10 A.L.R.4th 1209.

Eyeglasses or other optical accessories as subject to sales or use tax. 14 A.L.R.4th 1370.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 A.L.R.4th 269.

Failure to file, or deficiency in, state or local sales tax return. 20 A.L.R.4th 952.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th

750.

Sales, use, or privilege tax on sales of, or revenues from sales of advertising. 40 A.L.R.4th 1114.

Mining exemption to sales or use tax. 47 A.L.R.4th 1229.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Architectural drawings or illustrations as exempt from sales or use tax. 27 A.L.R.5th 794.

Am. Jur. 68 Am. Jur. 2d, Sales Tax, § 1 et seq.

C.J.S. 85 C.J.S., Tax, § 1231 et seq.

U. Ark. Little Rock L.J. Goldner, A Call for Reform of Arkansas Municipal Law, 15 U. Ark. Little Rock L.J. 175.

CASE NOTES

Cited: *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-75-101. Natural gas used to make glass.

SECTION.

26-75-102. Fort Smith Clearinghouse.

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-75-101. Natural gas used to make glass.

The gross receipts or gross proceeds derived from sales of natural gas used as fuel in the process of manufacturing glass is hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301 and 26-52-302;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and
- (3) All city and county sales and use taxes.

History. Acts 1993, No. 1140, § 1; 2007, No. 182, § 29.

Publisher's Notes. Acts 1993, No. 1140, § 1, is also codified as §§ 26-52-423, 26-53-134, and 26-74-102.

Amendments. The 2007 amendment

substituted "§§ 26-52-301 and 26-52-302" for "§§ 26-52-301, 26-52-302, and 26-52-1002."

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-75-102. Fort Smith Clearinghouse.

The gross receipts or gross proceeds derived from sales to the Community Service Clearinghouse, Inc., of Fort Smith are hereafter exempt from:

- (1) The Arkansas gross receipts tax levied by §§ 26-52-301, 26-52-302, and 26-63-402;
- (2) The Arkansas compensating use tax levied by §§ 26-53-106 and 26-53-107; and
- (3) All city and county sales and use taxes.

History. Acts 1993, No. 913, § 1; 2007, No. 182, § 30.

Publisher's Notes. Acts 1993, No. 913, § 1, is also codified as §§ 26-52-424, 26-53-135, and 26-74-103.

Amendments. The 2007 amendment substituted "26-63-402" for "26-52-1002."

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

SUBCHAPTER 2 — SALES AND USE TAX FOR CAPITAL IMPROVEMENTS

SECTION.

- 26-75-201. Purpose.
- 26-75-202. Construction.
- 26-75-203. Definitions.
- 26-75-204. Issuance of bonds.
- 26-75-205. Voter approval of bonds.
- 26-75-206. Pledge of revenues.
- 26-75-207. Levying of tax.
- 26-75-208. Special election required.
- 26-75-209. Effective date of ordinance.
- 26-75-210. Abolishment of tax.
- 26-75-211. Notification required.

SECTION.

- 26-75-212. Collection of tax.
- 26-75-213. Resubmission of question of levy or repeal.
- 26-75-214. Administration, collection, etc., of tax.
- 26-75-215. Repeal of taxes upon levy of additional statewide gross receipts tax — Exception.
- 26-75-216. Applicability of tax.
- 26-75-217. Disposition of funds.
- 26-75-218. Rules and regulations.

SECTION.

- 26-75-219. Procedures and penalties for enforcement.
 26-75-220. Existing taxing powers not limited.

SECTION.

- 26-75-221. Existing city sales taxes.
 26-75-222. Maximum tax limitation.
 26-75-223. Administration of Local Sales and Use Tax Trust Fund.

Effective Dates. Acts 1981 (1st Ex. Sess.), No. 25, § 14: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities of the class described herein are faced with financial crises with reference to having sufficient tax resources to provide municipal services to their inhabitants, that such cities in many instances compete with municipalities of other states which permit municipalities of such states to levy local sales and use taxes, that such cities are of sufficient size to have expertise in management of such tax revenues, and that such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such cities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 26, § 20: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the counties are faced with financial crises with reference to having sufficient tax resources to provide county services to their inhabitants. That such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such counties. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 513, § 2: Mar. 24, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that interest income from city and county sales and use tax funds held by the State is an urgent need of cities and counties. Therefore, an emergency is de-

clared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1983, No. 726, § 12: Mar. 23, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that certain cities within the State are in dire need of additional capital funds to provide essential services and facilities of such cities; that the most appropriate way for such cities to provide such funds is by the levying of a sales and use tax on the gross receipts derived from certain businesses within the city and the issuance of bonds payable from such tax revenues as herein authorized; that this Act is needed and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 1028, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that unless this Act is given effect immediately, the taxpayers of the State of Arkansas will be severely burdened in a manner not intended by this General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 862, § 4: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that under the present laws relating to the levy of city sales and use taxes when a proposition for the levy of such tax is submitted to the people and is either approved or defeated, the question may not again be submitted to the voters

for a period of one (1) year from the date of the last election and that this is unduly restrictive and should be altered to permit submission of the question of the levy of a tax to voters at a more frequent interval. Therefore, in order to accomplish that purpose, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 536, § 6: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements and to provide services to their inhabitants; that the citizens in most cities and counties have opted to levy an additional gross receipts tax on themselves, making over ninety percent (90%) of all sales in Arkansas subject to local gross receipts taxation; that the present method of not collecting the tax on delivery to an address in a city or county that does not levy a similar tax results in sales on which no tax is collected, thereby depriving the cities and counties of much needed revenues; that this system is working a great hardship on local merchants by causing extra bookkeeping expense; that eliminating the exception provided in the present collection process would provide additional revenues for cities and counties; and that the financial crises of the cities and counties constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to them. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1991, No. 765, § 22: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements of a public nature and to provide services to their inhabitants; that under current law the counties are restricted to a one percent (1%) levy and the cities are restricted to a one-half of one percent (0.05%) or one percent (1%)

levy; that the ability to levy a sales and use tax computed on one-fourth of one percent, one-half of one percent, three-fourths of one percent, or one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1991, No. 1019, § 6: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated authorizing the levy of a local sales and use tax by municipalities to levy such tax for a prescribed and limited period of time, and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 73, § 7: Apr. 1, 1992. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund capital improvements and to provide services to their inhabitants; that the citizens in most cities and counties have opted to levy an additional gross receipts tax on themselves, making over ninety percent (90%) of all sales in Arkansas subject to local gross receipts taxation; that the present method of collection of the tax on sales of items and services sold by a levying city or county has created an undue hardship on holders of direct pay permits; that the provisions of this act will relieve that hardship and provide additional revenues for cities and counties; and that the hardship constitutes such an emergency that the immediate passage of this act is necessary in order to provide relief to them. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public

peace, health, and safety shall take effect and be in full force and effect for purchases made on and after April 1, 1992.”

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995.”

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 1999, No. 1137, § 12: Apr. 6, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the provisions of Act 1176 of 1997 were intended to encourage the establishment of uniform definitions of the term ‘single transaction’ in connection with the levy and collection of local sales and use taxes. However, since the procedures established by the provisions of Act 1176 have caused confusion and have resulted in inconsistent applications of the procedures for adoption of local sales and use taxes, the interests of a number of cities and counties who have otherwise complied fully with the provisions of Arkansas law may be prejudiced. This is a result never intended by the General Assembly and which could result in financial hardships and the reduction of services provided by Arkansas cities and counties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

on the date the last house overrides the veto.”

Acts 2001, No. 1561, § 8: Apr. 12, 2001. Emergency clause provided: “It is found and determined by the General Assembly that legislation is needed for the collection and enforcement of certain municipal sales and use taxes and that the immediate passage of this act is necessary for the Department of Finance and Administration to fulfill its duties with respect to such taxes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: “This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days.”

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become

effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2005, No. 1269, § 3: Mar. 29, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that municipal sales and use taxes are levied by the voters for specific uses; that if the tax revenue is no longer needed for that specific use, the revenues cannot be used for other purposes; that this act will allow the voters of the municipality the opportunity to change the use of the tax revenues; and that this act is immediately necessary because it provides that the voters may choose to change the use of the tax revenues. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1270. § 3: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law provides that if a municipality has levied sales and use taxes and the county in which the city is located subsequently levies county sales and use taxes, the municipality may abolish its tax; that provisions are needed in this law to protect the revenues pledged to pay lease rentals and outstanding bonds; that this act would allow a portion and not all of the tax to be abolished; and that this act is immediately necessary because it provides that a portion of the tax may be abolished and also protects revenues pledged to pay leases and outstanding bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 116, § 10: Feb. 16, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the citizens of municipalities do not have the authority under current law to petition for the election on the question of the levying of a local sales and use tax; that the levying of a city sales and use tax must be in accordance with state enabling legislation; that there is an immediate need for municipalities to obtain additional revenues to operate; and that city services are suffering due to a lack of revenues. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport Act are suffering material adverse consequences under current procedures; and that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 181, § 45: Jan. 1, 2008.

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the development of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based businesses are dependent upon the State of Arkansas creating an environment that allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Comment, Municipal Bonds and Amendment No. 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.

U. Ark. Little Rock L.J. Legislation of

the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Legislative Survey, Bonds, 8 U. Ark. Little Rock L.J. 551.

26-75-201. Purpose.

(a) This subchapter is intended to supplement all constitutional provisions and other acts adopted for the acquiring, constructing, and equipping of capital improvements of a public nature and the issuance of bonds for the financing of capital improvements of a public nature.

(b) When applicable, in accordance with the provisions of this subchapter, this subchapter may be used by any city as an alternative, notwithstanding and without the necessity of compliance with any constitutional provision or any other act authorizing the city, or any commission or agency of the city, to issue bonds for the purpose of

financing the acquisition, construction, and equipment of capital improvements of a public nature.

(c)(1) This subchapter is intended to supplement and be levying authority for all Arkansas municipalities in addition to all other statutes authorizing municipal sales and use taxes.

(2) Collections of a tax levied by this subchapter may be used to secure the payment of bonds or for any purpose for which the municipality's general fund may be used or for a combination thereof.

History. Acts 1981 (1st Ex. Sess.), No. § 8; A.S.A. 1947, § 19-4536; Acts 2001, 25, § 17, as added by Acts 1983, No. 726, No. 1561, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Tax Law, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General As- Rev. 613.

CASE NOTES

Cited: WSC, Inc. v. City of Jacksonville, 302 Ark. 295, 789 S.W.2d 448 (1990).

26-75-202. Construction.

This subchapter shall be liberally construed to accomplish the purposes of this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 17, as added by Acts 1983, No. 726, § 8; A.S.A. 1947, § 19-4536.

26-75-203. Definitions.

As used in this subchapter:

(1) "Acquire" means to obtain at any time by gift, purchase, or other arrangement any capital improvement of a public nature or any portion of a capital improvement of a public nature, whether constructed and equipped before acquisition, partially constructed and equipped before acquisition, or being constructed and equipped at the time of acquisition for such consideration and pursuant to such terms and conditions as the governing body of the municipality shall determine;

(2) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(3) "Capital improvements of a public nature" means:

- (A) Street facilities;
- (B) Road facilities;
- (C) Public parks and other recreational facilities;
- (D) Port facilities;
- (E) Tourism facilities;
- (F) Airport facilities;
- (G) Sewerage facilities;
- (H) Waterworks facilities;

- (I) Fire protection facilities;
 - (J) Convention center facilities;
 - (K) City halls and other municipal buildings;
 - (L) Courthouses;
 - (M) Police facilities;
 - (N) Public transit facilities;
 - (O) Auditoriums;
 - (P) Prisons;
 - (Q) Libraries;
 - (R) Hospital and nursing home facilities;
 - (S) Solid waste facilities;
 - (T) Sanitation facilities;
 - (U) Bridges;
 - (V) Electric facilities;
 - (W) Hydroelectric facilities;
 - (X) Facilities for the securing and developing of industry;
 - (Y) Natural gas facilities;
 - (Z) Parking facilities;
 - (AA) Public housing facilities;
 - (BB) Pollution control facilities;
 - (CC) Public education facilities;
 - (DD) Drainage facilities;
 - (EE) Pedestrian facilities;
 - (FF) Lakes;
 - (GG) Dams;
 - (HH) Waterways;
 - (II) Regional mobility authority surface transportation systems;
- and
- (JJ) Research parks;

(4) "City" means any city of the first class, city of the second class, or incorporated town of the State of Arkansas;

(5) "Construct" means to build, in whole or in part, in such manner and by such method, including contracting to build, and if contracting to build, by negotiation or bidding upon such terms and pursuant to such advertising as determined by the governing body of the municipality, under the circumstances existing at the time, as will most effectively serve the purposes of this subchapter;

(6) "Director" means the Director of the Department of Finance and Administration, any successor of the director, or any authorized agent of the director;

(7) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(8) "Facilities" means real property, personal property, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, vehicles, materials, equipment, fixtures, machinery,

furniture, furnishings, buildings, and other improvements of every kind; and

(9) "Lease" means a lease of a capital improvement of a public nature by and between a city as lessee and another person as lessor, except as used in § 26-75-214.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 1; 1983, No. 726, § 1; A.S.A. 1947, § 19-4523; Acts 1995, No. 565, § 18; 2005, No. 1930, § 1; 2005, No. 2275, § 4; 2007, No. 1045, § 6.

Amendments. The 2005 amendment by No. 1930 substituted "Street facilities" for "Streets" in (3)(A); substituted "Road facilities" for "Roads" in (3)(B); added "and

other recreational facilities" in (3)(C); added "and other municipal buildings" in (3)(K); and inserted "vehicles" in (4).

The 2005 amendment by No. 2275 added (II) to present (3) and made related changes.

The 2007 amendment added (3)(JJ), and made related changes.

26-75-204. Issuance of bonds.

(a) A city levying the tax as permitted in this subchapter in addition to the authority existing under the laws of the state is authorized to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a "project", within or near such city and is authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues which the city is entitled to receive from the tax levied by such city pursuant to this subchapter to pay lease rentals or the principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a city pursuant to this subchapter shall be authorized by ordinance of the governing body. The bonds may:

(1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;

(2) Be exchangeable for bonds of another denomination;

(3) Be in such form and denominations;

(4) Be made payable at such places within or without the state;

(5) Be issued in one (1) or more series;

(6) Bear such date or dates;

(7) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(8) Bear interest at such rate or rates;

(9) Be payable in such medium of payment;

(10) Be subject to such terms of redemption; and

(11) May contain such other terms, covenants, and conditions, as the ordinance authorizing their issuance may provide, including, without limitation, those pertaining to:

(A) The custody, investment, and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the clerk or recorder of the city, shall be filed with the Director of the Department of Finance and Administration and with the Treasurer of State.

(d) The bonds shall be executed by the mayor of the city and attested by the clerk or recorder of the city, by their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the mayor. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the county issuing the bonds.

(e) The bonds shall not be general obligations of the city involved, but shall be special obligations secured and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the city within the meaning of any constitutional or statutory limitation. The principal of, and interest on, all bonds issued under the authority of this subchapter shall be secured by a pledge of, and shall be payable from, all or any part of the revenues derived from the tax levied by the city pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by other laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues of such facilities. The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the city and the holders and registered owners of the bonds issued by the city under the authority of this subchapter, which contract, and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the city may be enforced by mandamus or any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

(f) The ordinance authorizing the bonds may provide for the execution by the city with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the priority between and among successive issues and series, and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body including, without limitation, those pertaining to:

(1) The custody, investment, and application of the proceeds of bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(g) Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of the sale. In either case, the bonds may be sold at such price as the city may accept, including sale at a discount.

(h) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law. Any municipality or county, or any board, commission, or other authority established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

(i) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(j) Revenue bonds may be issued hereunder for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the

provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 15, as added by Acts 1983, No. 726, § 6; A.S.A. 1947, § 19-4534.

26-75-205. Voter approval of bonds.

No ordinance shall be passed by the governing body of a city under § 26-75-204 until a majority of the qualified electors of the city voting on the question shall have approved, at an election called for that purpose and conducted in accordance with the general municipal election laws, the principal amount of the bonds and the purpose for which the bonds will be issued.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 18, as added by Acts 1983, No. 726, § 9; A.S.A. 1947, § 19-4537.

26-75-206. Pledge of revenues.

Any city levying the tax as permitted in this subchapter is authorized to pledge all or any part of the revenues from the tax levied pursuant to this subchapter to the payment of lease rentals or principal of and interest on bonds issued by such city under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature or on bonds issued to refund such bonds, and such bonds, including the refunding bonds, shall be deemed to have been authorized by this subchapter for purposes of §§ 26-75-207 — 26-75-212, 26-75-213, 26-75-215, and 26-75-217.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 16, as added by Acts 1983, No. 726, § 7; A.S.A. 1947, § 19-4535.

26-75-207. Levying of tax.

(a)(1) The governing body of any city may adopt an ordinance levying a local sales and use tax in the amount of one-eighth of one percent

(0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), one percent (1%), or any combination of these amounts for the benefit of the city in accordance with the provisions of this subchapter.

(2) Each local sales and use tax authorized under this subchapter shall be adopted by ordinance or by petition as described in subsection (b) of this section and with the approval of the voters of the municipality in accordance with this subchapter.

(b)(1) A legal voter of a city may file a petition with the governing body of that city requesting a special election on the question of levying a local sales and use tax authorized under this subchapter in an amount as provided in subdivision (a)(1) of this section.

(2) The petition shall be signed by a number of the legal voters in the city that is no less than fifteen percent (15%) of the number of votes cast for the office of city clerk at the last preceding general election.

(c)(1) The governing body of the city by such levying ordinance or the petition described in subsection (b) of this section is not required to but may provide for an expiration date for such local sales and use tax.

(2) If an expiration date is provided, that date shall be the last day of the last month of a calendar quarter.

(d) The sales tax portion of any local sales and use tax adopted under this subchapter shall be levied by the governing body on the receipts from the sale at retail of all items and services that are subject to taxation under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1991, No. 765, § 14; 1991, No. 1019, § 1; 1995, No. 565, § 6; 2001, No. 1561, § 5; 2003, No. 1273, § 52; 2007, No. 116, §§ 1, 2.

Amendments. The 2003 amendment, in (c), deleted “within the city” following “at retail,” inserted “and services” following “of all items” and “of 1941,” and added “and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.”

The 2007 amendment rewrote (a)(2), which read: “Each tax shall be adopted by ordinance and with the approval of the voters of the municipality in accordance with this subchapter”; inserted (b) and redesignated the following subdivisions accordingly; and inserted “or the petition described in subsection (b) of this section” in (c)(1).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by

the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and

Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first

day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-75-208. Special election required.

(a)(1) On the date of the filing of a petition described in § 26-75-207(b) or on the date of adoption of an ordinance levying a local sales and use tax for the benefit of the city, or within thirty (30) days following the filing of the petition described in § 26-75-207(b) or adoption of the ordinance, the city by ordinance shall provide for the calling of a special election on the question in accordance with § 7-5-103(b).

(2) The special election shall be called for a date no later than one hundred twenty (120) days from the date of action of the governing body in establishing the date of the special election.

(3) The date for the special election may be the same as the date for the next regular municipal election if the next regular municipal election is to be held within the one-hundred-twenty-day period.

(4) The governing body of the city shall notify the county board of election commissioners that the question has been referred to the vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(b)(1) The ballot title to be used at such election shall be substantially in the following form:

“[] FOR adoption of a percent (.... %) local sales and use tax within (name of city).”

“[] AGAINST adoption of a percent (.... %) local sales and use tax within (name of city).”

(2) If an expiration date as described in § 26-75-207(c) for the local sales and use tax has been provided for by the governing body of the city in the levying ordinance or the petition described in § 26-75-207(b), the ballot title shall also include an expiration date for the levy of the tax,

and if adopted in this form the tax shall cease to be levied on the date noted on the ballot.

(3) The election shall be conducted in the manner provided by law for all other municipal elections unless otherwise specified in this subchapter.

(c)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales and use tax.

(B) If the ballot indicates designated uses and the tax is approved, the proceeds shall only be used for the designated uses set forth in the ballot.

(2) The proceeds may be used for other designated uses if the electors approve a change in the designated use of the revenues by vote under this subsection.

(3)(A) The governing body of a city may refer to the voters a change in the designated use of revenues derived from a sales or use tax that was approved by the voters.

(B) If the governing body of a city refers a change in the designated use of revenues derived from a sales or use tax to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the designated use of revenues derived from a sales or use tax shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-75-209.

(4) If the voters approve a change in the designated use of revenues derived from a sales or use tax, the change in the designated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-75-209.

(5)(A) If the voters do not approve a change in the designated use of revenues derived from a sales or use tax, the tax shall continue to be collected, and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the designated use of revenues derived from a sales or use tax shall not constitute an election on the levy of the tax.

(6) Any city that has levied a local sales and use tax under this subchapter with a portion of the revenues derived from the tax pledged to secure lease rentals or bonds may not change the tax to reduce the pledge in favor of the lease or bonds.

1991, No. 765, § 15; 1991, No. 1019, § 2; 2005, No. 1269, § 1; 2005, No. 2145, § 70; 2007, No. 116, § 3; 2007, No. 1049, § 92.

Amendments. The 2005 amendment by No. 1269 added (c).

The 2005 amendment by No. 2145 inserted the present subdivision designations in (a); and added (a)(2)(B).

The 2007 amendment by No. 116 inserted “the filing of a petition described in § 26-75-207(b) or on the date of” or similar language twice in (a)(1); and in (b)(2),

inserted “as described in § 26-75-207(c)” and substituted “or the petition described in § 26-75-207(b)” for “as described in § 26-75-207(b).”

The 2007 amendment by No. 1049 substituted “special election” for “general or special election” in (A), and substituted “proclamation issued in accordance with § 7-5-103(b)” for “shall be held no earlier than thirty (30) days after the adoption of the ordinance” in (B); and rewrote (a)(2).

CASE NOTES

In General.

Although this section requires voter approval of local tax ordinances, it does not require a subsequent election any time

the General Assembly modifies an exemption. *Western Foods, Inc. v. Weiss*, 338 Ark. 140, 992 S.W.2d 100 (1999).

26-75-209. Effective date of ordinance.

In order to provide time for the preparations for election set forth in this subchapter and to provide for the accomplishment of the administrative duties of the Director of the Department of Finance and Administration, the following effective dates are applicable with reference to any such ordinance levying such tax:

(1)(A) The ordinance or petition described in § 26-75-207 levying the tax shall not be effective until after the election has been held.

(B) Following the election, the mayor of the city shall issue his or her proclamation of the results of the election with reference to the local sales and use tax, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city.

(C) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county where the city is located within thirty (30) days of the date of publication of the proclamation.

(D)(i) The mayor of the city shall notify the director of the rate change after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(ii) If no election challenge is filed within the thirty-day challenge period, the ordinance or petition described in § 26-75-207 shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days’ notice by the director to sellers and after the expiration of the full thirty-day period of challenge.

(E) The rate change shall become applicable on the first day of a quarter after one hundred twenty (120) days’ notice by the director to sellers on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog; and

(2)(A) In the event of an election contest, the tax shall be collected as prescribed in subdivision (1) of this section unless enjoined by a court order.

(B) A hearing of these matters of litigation shall be advanced on the docket of the court and disposed of at the earliest feasible time.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1993, No. 266, § 4; 1995, No. 565, § 7; 2003, No. 1273, §§ 53, 54; Acts 2007, No. 116, §§ 4, 5.

Amendments. The 2003 amendment redesignated former (1)(D) as (1)(D)(ii); added present (1)(D)(i); in present (1)(D)(ii), substituted "The thirty-day challenge period" for "this period," substituted "after a minimum of sixty (60) day's notice by the director to sellers and after" for "subsequent to" and made minor stylistic changes; and added (1)(E).

The 2007 amendment inserted "or petition described in § 26-75-207" in (1)(A) and (1)(D)(ii); and, in (1)(C), substituted "circuit court" for "chancery court".

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been

found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-75-210. Abolishment of tax.

(a)(1) Except as set forth in subsection (b) of this section, in any city in which a city sales and use tax has been adopted in the manner provided in this subchapter, and subsequent to the adoption of the city tax the county where the city is located enacts a county sales and use tax, then the city may abolish its sales and use tax:

(A) By a roll call of two-thirds ($\frac{2}{3}$) of all the members elected to the governing body of the city, excluding the mayor; or

(B) After an election called by:

(i) Action of the governing body of the city; or

(ii) A petition of the qualified voters in the city.

(2) In all other cases, except under subsection (b) of this section, the city may abolish all or a portion of the sales and use tax by:

(A) A roll call vote of two-thirds ($\frac{2}{3}$) of all members elected to the governing body of the city, excluding the mayor, if the governing body of the city has determined that the purposes of the tax cannot be fulfilled or cannot continue to be fulfilled; or

(B) After an election called by:

(i) Action of the governing body of the city; or

(ii) A petition of the qualified voters in the city.

(3) The initiative procedures in Arkansas Constitution, Article 5, § 1, and any ordinances of the city's governing initiative procedures shall govern the petition of the qualified voters under this subsection and the calling and holding of an election concerning the abolishment of the tax.

(4) The governing body of the city may call for an election under this subsection according to the procedures set forth in this subchapter for the calling of the initial election on such question.

(5)(A) The ballot title for use in any election under this subsection shall be substantially the same as indicated in § 26-75-208(b), except that the word "ABOLITION" shall be substituted for the word "ADOPTION" as it appears in the ballot title set forth in § 26-75-208(b).

(B) A ballot title that contains a question for qualified voters on whether to continue the levy of a local sales and use tax complies with this subdivision (a)(5).

(b)(1) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is in effect or any of the bonds are outstanding.

(2) The bonds shall not be deemed outstanding to the extent that sufficient tax collections have been set aside to pay the bonds when due.

(c) The effective date of any affirmative vote of the qualified voters to abolish the tax under subsection (a) of this section shall correspond to the dates indicated in § 26-75-209 for the initial effective date of the tax.

(d)(1)(A) Beginning on the effective date of this subdivision (d)(1)(A) and ending on the effective date of subdivision (d)(1)(B) of this section, the effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (a) of this section shall be on the first day of the calendar quarter after the expiration of thirty (30) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the Director of the Department of Finance and Administration certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(B)(i) Except as provided in subdivision (d)(1)(A) of this section, the effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (a) of this section shall be on the first day of the calendar quarter after the expiration of ninety (90) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the director certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(ii) Subdivision (d)(1)(B)(i) of this section shall be effective on the first day of the first calendar quarter following the effective date of the Streamlined Sales and Use Tax Agreement, which becomes effective when at least ten (10) states comprising at least twenty percent (20%) of the total population as determined by the 2000 Federal Decennial Census of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.

(2) A copy of the ordinance shall be attached to the certificate.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; 1983, No. 726, § 2; A.S.A. 1947, § 19-4524; Acts 2005, No. 1270, § 1.

A.C.R.C. Notes. Regarding the language “the effective date of the Streamlined Sales and Use Tax Agreement” in subdivision (d)(1)(B)(ii) of this section, the agreement went into effect on October 1,

2005, and Arkansas became a full member of the agreement effective January 1, 2008. See Acts 2007, No. 180, § 1.

Amendments. The 2005 amendment rewrote (a); redesignated former (b) as present (b)(1); substituted “the bonds” for “such bonds” in present (b)(1); and added (b)(2), (c) and (d).

CASE NOTES

Capital Improvements.

When a local sales and use tax (an “operating penny” tax) is imposed for capital improvements, the right to an immediate repeal by initiative is lost since the

tax cannot be abolished until the bonds or leases are paid in full. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

26-75-211. Notification required.

(a) As soon as is feasible, and no later than ten (10) days following each of the events set forth in the ordinance with reference to the procedure for the adoption or abolition of a tax and the effective dates

of such an action, the city clerk of the city shall notify the Director of the Department of Finance and Administration of such event.

(b)(1) If any city in which a local sales and use tax has been imposed in the manner provided for in this subchapter shall thereafter change or alter its boundaries, the city clerk of the city shall forward to the director at least ninety (90) days before the effective date a certified copy of the ordinance adding or detaching territory from the city, which shall be accompanied by a map clearly showing the territory added or detached.

(2) After receipt of the ordinance and map, the tax imposed under this subchapter shall be effective in the added territory or abolished in the detached territory on the first day of the first month of the calendar quarter following the expiration of sixty (60) days' notice by the director to sellers.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 19-4524; Acts 1995, No. 565, § 8; 2003, No. 383, § 5; 2003, No. 1273, § 55.

Amendments. The 2003 amendment by No. 383 rewrote this section.

The 2003 amendment by No. 1273 made a stylistic change in (a); redesignated (b) as (b)(1) and (b)(2); inserted "at least ninety (90) days before the effective date" in (b)(1); and substituted "sixty (60) days' notice by the director to sellers" for "thirty (30) days from the date that the annexation or detachment becomes effective" in (b)(2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Taxation, Sales and Use Tax, 26 Legislation, 2003 Arkansas General As- U. Ark. Little Rock L. Rev. 498.

26-75-212. Collection of tax.

(a)(1)(A) In each city where a local sales and use tax has been imposed in the manner provided by this subchapter, every retailer shall add the tax imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the tax imposed by this subchapter to his or her sale price, and when added, the combined tax shall:

- (i) Constitute a part of the price;
- (ii) Be a debt of the purchaser to the retailer until paid; and
- (iii) Be recoverable at law in the same manner as the purchase price.

(B) When the sale price in the city shall involve a fraction of a dollar, the two (2) combined taxes shall be added to the sale price.

(C) A retailer shall be entitled to the same discount with respect to tax remitted under this subchapter as is authorized for the collection and remission of gross receipts taxes to the State of Arkansas as authorized in § 26-52-503.

(2)(A) Any fraction of one cent (1¢) of tax that is less than one-half of one cent ($\frac{1}{2}$ of 1¢) shall not be collected.

(B) Any fraction of one cent (1¢) of tax equal to one-half of one cent ($\frac{1}{2}$ of 1¢) or more shall be collected as a whole one cent (1¢) of tax.

(3) In the event that the General Assembly or the electors of the state shall either increase or decrease the rate of the state gross receipts tax, the combined rate of the state gross receipts tax and the local sales tax shall be the sum of the two (2) rates.

(b) The tax levied in this subchapter on new and used motor vehicles shall be collected by the Director of the Department of Finance and Administration directly from the purchaser in the manner prescribed in § 26-52-510.

(c)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on the vendor's sales and use tax report.

(2) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(4) This subsection only applies to a tax collected by the director.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 2; 1983, No. 802, § 3; A.S.A. 1947, § 19-4524; Acts 1997, No. 1176, § 10; 2003, No. 747, § 5; 2003, No. 1273, § 56.

Amendments. The 2003 amendment by No. 747 redesignated former (a)(i)(C) as (a)(1)(C)(i) and (a)(1)(C)(ii) and made stylistic changes in present (a)(1)(C)(i);

deleted "authorized for the collection and remission of gross receipts taxes to the State of Arkansas as" preceding "authorized" in (a)(1)(C)(ii).

The 2003 amendment by No. 1273 redesignated the subdivisions in (a)(1); deleted "according to a schedule and bracket system formula established by the director" following "sale price" in present (a)(1)(B); deleted the last sentence in (a)(3); and made stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given.

These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-75-213. Resubmission of question of levy or repeal.

(a)(1) Except as provided in § 26-75-210 and in subsection (b) of this section, when the question of the levy or repeal of a city sales and use tax is submitted to the electors and the proposition is approved or defeated, the question shall not again be submitted to the electors by ordinance of the governing body of the city or by a petition of electors for a period of six (6) months from the date the question was last voted upon.

(2) A petition requesting that the question be submitted to the electors of the city shall contain the signatures of at least fifteen percent (15%) of the electors of the city as determined by the total number of votes cast for all candidates for mayor of the city at the last preceding general election.

(3)(A) The petition shall be filed with and verified by the city clerk.

(B) If the petition is found to be sufficient, the question shall be submitted to the electors at a special election on a date as may be requested by the petition.

(4) The special election shall be called in accordance with § 7-5-103(b) for a date not more than ninety (90) days from the date on which the city clerk certifies the sufficiency of the petition to the governing body of the city.

(b) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to the payment of lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is in effect or any of the bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 3; 1983, No. 726, § 3; A.S.A. 1947, § 19-4525; Acts 1989, No. 862, § 1; 2005, No. 2145, § 71; 2007, No. 1049, § 93.

The 2007 amendment substituted “on a date” for “or the next general election” in (a)(3); and rewrote (a)(4).

Amendments. The 2005 amendment rewrote (a).

26-75-214. Administration, collection, etc., of tax.

(a) On and after the effective date of any tax imposed under the provisions of this subchapter, the Director of the Department of Finance and Administration shall perform all functions incidental to the administration, collection, enforcement, and operation of the tax.

(b) In addition to the state gross receipts tax and compensating tax, the director shall collect an additional tax under the authority of this subchapter on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, distribution, or other consumption of all taxable items and services subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) The tax imposed under this subchapter and the tax imposed under the gross receipts tax and compensating tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the director not inconsistent with the provisions of this subchapter.

(2) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his or her sales and use tax report.

(3) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(4) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(5) This subsection only applies to a tax collected by the director.

(d) On and after the effective date of any proposition to abolish such local sales and use tax in any city, the director shall comply with the proposition as provided in this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 4; A.S.A. 1947, § 19-4526; Acts 1997, No. 1176, § 11; 2003, No. 1273, § 57.

Amendments. The 2003 amendment, in (b), inserted “distribution,” deleted “within the city which property is” following “taxable items,” inserted “and services” and made stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the

Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-75-215. Repeal of taxes upon levy of additional statewide gross receipts tax — Exception.

(a) Subject to the provisions of subsection (b) of this section, if the General Assembly shall levy an additional statewide gross receipts tax of one percent (1%) or more, the governing body of any city which has levied a city sales and use tax pursuant to the authority granted in this subchapter, or under the provisions of § 26-75-301 et seq., § 26-75-501 et seq., or § 26-75-601 et seq., by ordinance approved by the governing body may repeal such city sales tax or city sales and use tax.

(b) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized

by this subchapter, that portion of the tax pledged to the payment of lease rentals or bonds shall not be repealed, abolished, or reduced so long as the lease is in effect or any of the bonds are outstanding.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 5; 1983, No. 726, § 4; A.S.A. 1947, § 19-4527.

26-75-216. Applicability of tax.

(a) A city sales and use tax levied pursuant to the authority granted in this subchapter or in § 26-75-301 et seq. shall be applicable to sales of items and services sold by a business and shall be administered in accordance with the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) When a direct pay permit holder purchases tangible personal property or taxable services either from an Arkansas or out-of-state vendor for use, storage, consumption, or distribution in Arkansas, the permit holder shall accrue and remit the city sales and use tax, if any, pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 6; A.S.A. 1947, § 19-4528; Acts 1991, No. 536, § 2; 1991, No. 765, § 16; 1992 (1st Ex. Sess.), No. 73, § 3; 2003, No. 374, §§ 5, 6; 2003, No. 1273, § 58; 2007, No. 181, § 42.

Amendments. The 2003 amendment by No. 374 redesignated former (a)(1) as (a)(1)(A) and (B) and added "Except as provided in subdivision (a)(1)(B) of this section" preceding "a city sales tax"; substituted "under" for "pursuant to the authority granted in" in present (a)(1)(A); made stylistic changes in (a)(1)(B); and substituted "apply" for "be applicable" in (b).

The 2003 amendment by No. 1273 redesignated (a)(1)(A) as (a) and rewrote the subdivision; deleted former (a)(2) and (b); redesignated former (c) as (b); and in present (b), inserted "or taxable services" and "or services" and made related changes, and deleted "When a direct pay permit holder purchases taxable services, the permit holder shall accrue and remit the sales tax, if any, of the city where the services are performed" from the end.

The 2007 amendment inserted "and use" in (a); and substituted "pursuant to the sourcing rules in §§ 26-52-521 and 26-52-522" for "of the city where the property or services are first used, stored, consumed or distributed" in (b).

Effective Dates. Acts 2003, No. 374, § 7: Aug. 1, 2003. Effective date clause provided: "This act shall become effective on the first day of the calendar month following the ninetieth day after the sine die adjournment of this session or the first day of the calendar month following the ninetieth day after a recess or adjournment for a period longer than ninety (90) days."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in

compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agree-

ment. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 181, § 45: Jan. 1, 2008, by its own terms.

26-75-217. Disposition of funds.

(a)(1) The Treasurer of State shall transmit to the treasurer or financial officer of each such city that city's share of local sales and use taxes collected under this subchapter periodically as promptly as feasible. Transmittals required under this subchapter shall be made at least monthly in each state fiscal year. Funds so transmitted may be used by the city for any purpose for which the city's general funds may be used.

(2) Before transmitting such funds, the Treasurer of State shall deduct three percent (3%) of the sum collected from each such city during such period as a charge by the state for its services specified in this subchapter, and the amount so deducted shall be deposited by the Treasurer of State to the credit of the account of the Constitutional Officer's Fund and the State Central Services Fund.

(b)(1) The Treasurer of State is authorized to retain in the suspense account of any city a portion of the city's share of the tax collected under this subchapter. Such balance so retained in the suspense account shall not exceed five percent (5%) of the amount remitted to the city.

(2) The Treasurer of State is authorized to make refunds from the suspense account of any city for overpayments made to such accounts, after such refunds have been approved by the Director of the Department of Finance and Administration, and to redeem dishonored checks and drafts deposited to the credit of the suspense account of such cities.

(c)(1) When any city shall adopt the local sales and use tax and shall thereafter abolish such tax, the Treasurer of State shall retain in the suspense account of such city for a period of one (1) year five percent (5%) of the final remittance to such city at the time of termination of collection of such tax in the city to cover possible refunds for overpay-

ment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts.

(2) After one (1) year has elapsed after the effective date of abolishment of such tax, the Treasurer of State shall remit the balance of such account to the city and close the account. After this one-year period has lapsed and the account is closed, no refund will be allowed.

(d) Any moneys collected which as indicated by a certified copy of an ordinance of the city previously filed with the director and the Treasurer of State are pledged to secure lease rentals or the payment of bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into banks designated by the city as cash funds and transmitted to the city subject to the charges payable and retainage authorized in this section. Charges deducted shall be transmitted to the Treasurer of State, and amounts retained shall be retained by the Treasurer of State as cash funds.

(e)(1) Except for revenue collected under subdivision (e)(2) of this section, money collected from a tax on aviation fuel by a city where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city or within the county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 7; 1983, No. 726, § 5; A.S.A. 1947, § 19-4529; Acts 1997, No. 1176, § 12; 2007, No. 166, § 5.

Amendments. The 2007 amendment added (e).

CASE NOTES

Capital Improvements.

A city's sales and use tax, also known as an "operating penny" tax since it could be used by the city for any purpose for which the city's general funds could be used, is

no longer limited to providing services, but can now be converted to pay for capital improvements. *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993).

26-75-218. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 9; A.S.A. 1947, § 19-4531.

26-75-219. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any local tax imposed pursuant to this subchapter shall be the same as for the state gross receipts tax and compensating tax, except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when such taxpayer is also delinquent in payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any city under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from such sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the city.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 10; A.S.A. 1947, § 19-4532.

26-75-220. Existing taxing powers not limited.

No provision of this subchapter shall be construed to abolish or limit existing powers of taxation of the city.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 8; A.S.A. 1947, § 19-4530.

26-75-221. Existing city sales taxes.

(a) All city taxes adopted pursuant to § 26-75-301 et seq., § 26-75-501 et seq., or § 26-75-601 et seq., which are in effect on December 1, 1981, shall remain in full force and effect and are not repealed by the provisions of this subchapter except as to the administration, collection, enforcement, and operation of the tax as specifically set out in this subchapter.

(b) It is recognized by the General Assembly that several municipalities, such as North Little Rock, Siloam Springs, Mountain Home, Conway, Caddo Valley, and others, have enacted a sales and use tax pursuant to § 26-75-301 et seq. It is the intent of the General Assembly to affirm the validity of sales and use taxes adopted and enacted by those municipalities. It is provided further that for city sales and use taxes adopted pursuant to these statutes, the procedures for repeal and enforcement as set out in this subchapter shall hereinafter be applicable to any such tax adopted by any city pursuant to them.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 12; A.S.A. 1947, § 19-4533.

26-75-222. Maximum tax limitation.

(a)(1) Any municipal general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(b)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his or her sales and use tax report.

(2) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(c) This section only applies to a tax collected by the Director of the Department of Finance and Administration.

History. Acts 1983, No. 802, §§ 1, 2; A.S.A. 1947, §§ 17-2044, 17-2045; Acts 1993, No. 669, § 4; 1997, No. 1176, § 13; 1999, No. 1137, § 5; 2003, No. 1273, § 59.

Publisher's Notes. Acts 1999, No. 1137, § 8, provided: "It is the express intent of the General Assembly that this act be applied retroactively to any city or county ordinance adopted after January 1, 1998, as it is remedial and procedural in nature."

Amendments. The 2003 amendment redesignated former (a)(1) as present (a), twice substituted "the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile

homes" for "each single transaction"; redesignated former (a)(2)(A) as present (b)(1) and added gender neutral language; redesignated former (a)(2)(B) as present (b)(2), former (a)(2)(C) as present (b)(3), and former (a)(3) as present (c); and deleted former (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid

growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if

the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-75-223. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created a trust fund for the remittance of local sales and use taxes which shall be known as the "Local Sales and Use Tax Trust Fund".

(2)(A) There is also created a trust fund which shall be known as the "Identification Pending Trust Fund for Local Sales and Use Taxes".

(B)(i) Money reported as local sales and use taxes which was collected in local taxing jurisdictions which are not immediately identifiable and money collected in local jurisdictions which have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money which has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars

(\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(C)(i) Money reported as local sales and use taxes which was collected by an out-of-state vendor and which is not identifiable shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes. Any such funds so deposited shall not be included for computation of transfer to general revenue in subdivision (a)(2)(B) of this section.

(ii) The Treasurer of State shall distribute unidentified local sales and use taxes collected by out-of-state vendors to the county treasurers and city treasurers as determined by their proportionate share of distribution from the Local Sales and Use Tax Trust Fund on a monthly basis.

(b)(1) The Treasurer of State as the administrator of the Local Sales and Use Tax Trust Fund shall review the flow of moneys through the Local Sales and Use Tax Trust Fund in the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2) After making the estimate the administrator shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas. All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall monthly transmit to the county treasurers and city treasurers their proportionate share of the interest derived from investment of the Local Sales and Use Tax Trust Fund.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1; 1985, No. 1028, § 1; A.S.A. 1947, §§ 17-2038, 17-2046; Acts 1991, No. 621, § 3.

Publisher's Notes. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1;

1985, No. 1028, § 1, are also codified as §§ 26-74-221, 26-74-317, and 26-75-318.

Cross References. Local Sales and Use Tax Trust Fund for refund of taxes, § 19-5-934.

SUBCHAPTER 3 — SALES TAX FOR CAPITAL IMPROVEMENTS

SECTION.

- 26-75-301. Purpose.
- 26-75-302. Construction.
- 26-75-303. Definitions.
- 26-75-304. Issuance of bonds.
- 26-75-305. Voters' approval of bonds.
- 26-75-306. Pledge of revenues.
- 26-75-307. Levying of tax.
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- 26-75-310. Abolishment of tax.
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SECTION.

- 26-75-314. Rules and regulations.
- 26-75-315. Existing taxing powers not limited.
- 26-75-316. Excise tax on storage, use, or other consumption.
- 26-75-317. Existing city sales taxes.
- 26-75-318. Administration of Local Sales and Use Tax Trust Fund.
- 26-75-319. Maximum tax limitation.
- 26-75-320. Procedures and penalties for enforcement.
- 26-75-321. Rebate.

Effective Dates. Acts 1975, No. 990, § 13: became law without Governor's signature, Apr. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities of the class described herein are faced with financial crises with reference to having sufficient tax resources to provide municipal services to their inhabitants, that such cities in many instances compete with municipalities of other states which permit municipalities of such states to levy local sales and use taxes, that such cities are of sufficient size to have expertise in management of such tax revenues, and that such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such cities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1981, No. 133, § 3: Feb. 20, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that there is a great need for immediate improvement of municipal services and a stable source of revenue to finance such vital local government services. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect and be in full force immediately on its passage and approval."

Acts 1981, No. 406, § 3: Mar. 11, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of small cities and towns in this State located in counties adjoining the state line of another state in which is located a historic district and having tourism as the major industry in said city, must provide a number of services requiring additional cost to the city for fire and police protection, street construction and maintenance, water, sewer and related projects to protect public peace, health and safety, and that the immediate passage of this Act is necessary to enable said cities to obtain the benefits of the provisions of additional tax revenues, upon approval of the electors of said city, as authorized by Act 990 of 1975, as amended, and that the immediate pas-

sage of this Act is necessary to enable said cities to obtain the benefits of the provisions of this Act prior to the commencement of the 1981 tourist season. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 861, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and declared by the General Assembly that there is a great need for immediate improvement of municipal services and a stable source of revenue to finance such vital local government services. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the protection of the public peace, health and safety shall take effect and be in full force immediately on its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 25, § 14: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities of the class described herein are faced with financial crises with reference to having sufficient tax resources to provide municipal services to their inhabitants, that such cities in many instances compete with municipalities of other states which permit municipalities of such states to levy local sales and use taxes, that such cities are of sufficient size to have expertise in management of such tax revenues, and that such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such cities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1981 (1st Ex. Sess.), No. 26, § 20: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the counties are faced with financial crises with reference to having sufficient tax resources to provide county services to their inhabitants. That such financial crises constitute such an emergency that the immediate passage of this Act is necessary in order to provide financial relief to such counties. Therefore, an emergency is hereby declared to

exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1983, No. 513, § 2: Mar. 24, 1983. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that interest income from city and county sales and use tax funds held by the State is an urgent need of cities and counties. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately upon its passage and approval."

Acts 1983, No. 722, § 11: Mar. 23, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that certain cities within the State are in dire need of additional capital funds to provide essential services and facilities of such cities; that the most appropriate way for such cities to provide such funds is by the levying of a sales and use tax on the gross receipts derived from certain business within the city and the issuance of bonds payable from such tax revenues as herein authorized; that this Act is needed and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 1028, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that unless this Act is given effect immediately, the taxpayers of the State of Arkansas will be severely burdened in a manner not intended by this General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 765, § 22: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and counties are faced with financial crises with reference to having sufficient tax resources to fund

capital improvements of a public nature and to provide services to their inhabitants; that under current law the counties are restricted to a one percent (1%) levy and the cities are restricted to a one-half of one percent (0.5%) or one percent (1%) levy; that the ability to levy a sales and use tax computed on one-fourth of one percent, one-half of one percent, three-fourths of one percent, or one percent (1%) would be a feasible alternative for some cities and counties in financial crisis; and that such financial crises constitute such an emergency that the immediate passage of this act is necessary in order to provide financial relief to the cities and counties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 2001, No. 1561, § 8: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that legislation is needed for the collection and enforcement of certain municipal sales and use taxes and that the immediate passage of this act is necessary for the Department of Finance and Administration to fulfill its duties with respect to such taxes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its ap-

proval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member

of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2005, No. 1269, § 3: Mar. 29, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that municipal sales and use taxes are levied by the voters for specific uses; that if the tax revenue is no longer needed for that specific use, the revenues cannot be used for other purposes; that this act will allow the voters of the municipality the opportunity to change the use of the tax revenues; and that this act is immediately necessary because it provides that the voters may choose to change the use of the tax revenues. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1270, § 3: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that municipal sales and use taxes are levied by the voters for specific uses; that if the tax revenue is no longer needed for that specific use, the revenues cannot be used for other purposes; that this act will allow the voters of the municipality the opportunity to change the use of the tax revenues; and that this act is immediately necessary because it provides that the voters may choose to change the use of the tax revenues. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 116, § 10: Feb. 16, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the citizens of municipalities do not have the authority under current law to petition for the election on the question of the levying of a local sales and use tax; that the levying of a city sales and use tax must be in accordance with state enabling legislation; that there is an immediate need for municipalities to obtain additional revenues to operate; and that city services are suffering due to a lack of revenues. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the development of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based businesses are dependent upon the State of Arkansas creating an environment that allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

26-75-301. Purpose.

(a) This subchapter is intended to supplement all constitutional provisions and other acts adopted for the acquiring, constructing, and equipping of capital improvements of a public nature and the issuance of bonds for the financing of capital improvements of a public nature.

(b) When applicable, in accordance with the provisions of this subchapter, this subchapter may be used by any city as an alternative, notwithstanding and without the necessity of compliance with any constitutional provision or any other act authorizing the city, or any commission or agency of the city, to issue bonds, for the purpose of

financing the acquisition, construction, and equipment of capital improvements of a public nature.

(c)(1) This subchapter is intended to supplement and be levying authority for all Arkansas municipalities in addition to all other statutes authorizing municipal sales and use taxes.

(2) Collections of a tax levied by this subchapter may be used to secure the payment of bonds or for any purpose for which the municipality's general fund may be used or for a combination thereof.

History. Acts 1975, No. 990, § 16, as 1947, § 19-4522.3; Acts 2001, No. 1561, added by Acts 1983, No. 722, § 7; A.S.A. § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Tax Law, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General As- Rev. 613.

26-75-302. Construction.

This subchapter shall be liberally construed to accomplish the purposes of this subchapter.

History. Acts 1975, No. 990, § 16, as added by Acts 1983, No. 722, § 7; A.S.A. 1947, § 19-4522.3.

26-75-303. Definitions.

As used in this subchapter:

(1) "Acquire" means to obtain at any time by gift, purchase, or other arrangement any capital improvement of a public nature, or any portion of a capital improvement of a public nature, whether constructed and equipped before acquisition, partially constructed and equipped before acquisition, or being constructed and equipped at the time of acquisition, for such consideration and pursuant to such terms and conditions as the governing body shall determine;

(2) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(3) "Capital improvements of a public nature" means:

- (A) Streets;
- (B) Roads;
- (C) Public parks;
- (D) Port facilities;
- (E) Tourism facilities;
- (F) Airport facilities;
- (G) Sewerage facilities;
- (H) Waterworks facilities;
- (I) Fire protection facilities;
- (J) Convention center facilities;
- (K) City halls;
- (L) Courthouses;

- (M) Police facilities;
 - (N) Public transit facilities;
 - (O) Auditoriums;
 - (P) Prisons;
 - (Q) Libraries;
 - (R) Hospital and nursing home facilities;
 - (S) Solid waste facilities;
 - (T) Sanitation facilities;
 - (U) Bridges;
 - (V) Electric facilities;
 - (W) Hydroelectric facilities;
 - (X) Facilities for the securing and developing of industry;
 - (Y) Natural gas facilities;
 - (Z) Parking facilities;
 - (AA) Public housing facilities;
 - (BB) Pollution control facilities;
 - (CC) Public education facilities;
 - (DD) Drainage facilities;
 - (EE) Pedestrian facilities;
 - (FF) Lakes;
 - (GG) Dams;
 - (HH) Waterways;
 - (II) Regional mobility authority surface transportation systems;
- and

(JJ) Research parks;

(4)(A) "City" means any city of the first class, city of the second class, or incorporated town of the State of Arkansas.

(B)(i) Any city in this state having a population of three thousand (3,000) or fewer inhabitants according to the most recent federal decennial census, located in a county that borders on the state line of another state, having in the city a designated historic district that is included in the National Registry of Historic Places, and which is certified by the State Parks, Recreation, and Travel Commission as having tourism as the major industry in the city, shall be deemed to be a city within the meaning of the term "city" as the same is provided in this subchapter.

(ii) Any city described in subdivision (4)(B)(i) of this section may levy a local sales, gross receipts, and use tax for the benefit of the city, in accordance with the provisions of this subchapter and in the same manner and procedures as provided in this subchapter;

(5) "Construct" means to build, in whole or in part, in such manner and by such method, including contracting to build and, if contracting, by negotiation or bidding upon such terms and pursuant to such advertising as the governing body determines under the circumstances existing at the time will most effectively serve the purposes of this subchapter;

(6) "Director" means the Director of the Department of Finance and Administration, or any successor of the director, or any authorized agent of the director;

(7) “Equip” means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitation, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(8) “Facilities” means real, personal, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, buildings, and other improvements of every kind; and

(9) “Lease” means a lease of a capital improvement of a public nature by and between a city as lessee and another person as lessor, except as used in §§ 26-75-304 and 26-75-313.

History. Acts 1975, No. 990, § 1; 1977, No. 953, § 1; 1979, No. 479, § 1; 1981, No. 133, § 1; 1981, No. 406, § 1; 1981, No. 861, § 1; 1983, No. 722, § 1; A.S.A. 1947, §§ 19-4513, 19-4513.1; Acts 1995, No. 565, § 19; 2005, No. 2275, § 5; 2007, No. 1045, § 7.

Publisher’s Notes. Acts 1977, No. 953, became law without the Governor’s signature on April 1, 1977.

Amendments. The 2005 amendment added (3)(HH) and made a related change.

The 2007 amendment added (3)(JJ), and made related changes.

CASE NOTES

Constitutionality.

Acts 1981, No. 861, which amended this section and § 26-75-312 by reenacting in full in this section the definition of “city” which was being changed, added a new subsection (b) to § 26-75-312, and contained an emergency clause referring to the immediate need for a stable source of revenue to finance an improvement in needed municipal services, did not contain such a marked lack of information as to

amount to a violation of Ark. Const., Art. 5, § 23. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

The effect of Acts 1981, No. 861, which amended this section and § 26-75-312 was to convert Acts 1975, No. 990 into a general law, applicable alike to all cities and towns throughout the state, and consequently, there was no violation of Ark. Const. Amend. 14. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

26-75-304. Issuance of bonds.

(a) A city levying the tax permitted in this subchapter in addition to the authority existing under the laws of this state is authorized to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a “project”, within or near such city and is authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues from the tax levied by such city pursuant to this subchapter to pay lease rentals or the principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a city pursuant to this subchapter shall be authorized by ordinance of the governing body. The bonds may:

(1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;

(2) Be exchangeable for bonds of another denomination;

(3) Be in such form and denominations;

- (4) Be made payable at such places within or without the state;
- (5) Be issued in one (1) or more series;
- (6) Bear such date or dates;
- (7) Mature at such time or times, not exceeding forty (40) years from their respective dates;
- (8) Bear interest at such rate or rates;
- (9) Be payable in such medium of payment;
- (10) Be subject to such terms of redemption; and
- (11) Contain such other terms, covenants, and conditions, as the ordinance authorizing their issuance may provide including, without limitation, those pertaining to:

(A) The custody, investment, and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the clerk or recorder of the city, shall be filed with the Director of the Department of Finance and Administration and with the Treasurer of State.

(d) The bonds shall be executed by the mayor of the city and attested by the clerk or recorder of the city, by their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the mayor. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the city issuing the bonds.

(e) The bonds shall not be general obligations of the city involved but shall be special obligations secured and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the city within the meaning of any constitutional or statutory limita-

tion. The principal of, and interest on, all bonds issued under the authority of this subchapter shall be secured by a pledge of, and shall be payable from, all or any part of the revenues derived from the tax levied by the city pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by other laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues of such facilities. The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the city and the holders and registered owners of the bonds issued by the city under the authority of this subchapter, which contract, and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the city may be enforced by mandamus or by any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

(f) The ordinance authorizing the bonds may provide for the execution by the city with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the priority between and among successive issues and series, and may contain any other terms, covenants, and conditions that are deemed desirable by the governing body including, without limitation, those pertaining to:

(1) The custody, investment, and application of the proceeds of bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(g) Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of the sale. In either case, the bonds may be sold at such price as the city may accept, including sale at a discount.

(h) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the

state is authorized by law. Any municipality or county, or any board, commission, or other authority duly established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

(i) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(j) Revenue bonds may be issued under this subchapter for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1975, No. 990, § 14, as added by Acts 1983, No. 722, § 5; A.S.A. 1947, § 19-4522.1.

26-75-305. Voters' approval of bonds.

No ordinance shall be passed by the governing body of a city under § 26-75-304 until a majority of the qualified electors of the city voting on the question shall have approved at an election called for that purpose and conducted in accordance with the general municipal election laws the principal amount of the bonds and the purpose for which the bonds will be issued.

History. Acts 1975, No. 990, § 17, as added by Acts 1983, No. 722, § 8; A.S.A. 1947, § 19-4522.4.

26-75-306. Pledge of revenues.

Any city levying the tax as permitted in this subchapter is authorized to pledge all or any part of the revenues from the tax levied pursuant to this subchapter to the payment of lease rentals or principal of and interest on bonds issued by such city under the authority of any other law in effect for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature, or on bonds issued to refund such bonds; and such bonds, including the refunding bonds, shall be deemed to have been authorized by this subchapter for purposes of §§ 26-75-307 — 26-75-313.

History. Acts 1975, No. 990, § 15, as added by Acts 1983, No. 722, § 6; A.S.A. 1947, § 19-4522.2.

26-75-307. Levying of tax.

(a)(1) The governing body of any city may adopt an ordinance levying a local sales or gross receipts and use tax in the amount of one-eighth of one percent (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.5%), three-fourths of one percent (0.75%), one percent (1%), or any combination of these amounts for the benefit of the city in accordance with the provisions of this subchapter.

(2) Each local sales or gross receipts and use tax authorized under this subchapter shall be adopted by ordinance or by petition as described in subsection (b) of this section and with the approval of the voters of the municipality in accordance with this subchapter.

(b)(1) A legal voter of a city may file a petition with the governing body of that city requesting a special election on the question of levying a local sales or gross receipts and use tax authorized under this subchapter in an amount as provided in subdivision (a)(1) of this section.

(2) The petition shall be signed by a number of the legal voters in the city that is no less than fifteen percent (15%) of the number of votes cast for the office of city clerk at the last preceding general election.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1991, No. 765, § 17; 2001, No. 1561, § 6; 2007, No. 116, § 6.

Amendments. The 2007 amendment added (b) and redesignated former (a) and

(b) as (a)(1) and (a)(2); and rewrote (a)(2), which read "Each tax shall be adopted by ordinance and with the approval of the voters of the municipality in accordance with this subchapter."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Constitutional Law, 14 U. Ark. Little Rock L.J. 301.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

Cited: North Little Rock v. Graham, Maas v. City of Mt. Home, 338 Ark. 202, 278 Ark. 547, 647 S.W.2d 452 (1983); 992 S.W.2d 105 (1999).

26-75-308. Special election to approve.

(a)(1) On the date of the filing of a petition described in § 26-75-307(b) or on the date of adoption of an ordinance levying a local sales and use tax for the benefit of the city, or within thirty (30) days following the filing of the petition described in § 26-75-307(b) or adoption of the ordinance, the city by ordinance shall provide for the calling and holding of a special election on the question in accordance with § 7-5-103(b).

(2) The special election shall be called for a date no later than one hundred twenty (120) days from the date of action of the governing body in establishing the date of special election.

(3) The governing body of the city shall notify the county board of election commissioners that the question has been referred to the vote of the people and shall submit a copy of the ballot title to the county board of election commissioners.

(b)(1) The ballot title to be used at the election shall be substantially in the following form:

“[] FOR adoption of a percent (.... %) local sales and use tax within (name of city).”

“[] AGAINST adoption of a percent (.... %) local sales and use tax within (name of city).”

(2) The election shall be conducted in the manner provided by law for all other municipal elections unless otherwise specified in this subchapter.

(c)(1) The ballot title may also include an expiration date, and if adopted in this form, the tax shall cease to be levied on the date noted on the ballot.

(2) The expiration date shall be the last day of a calendar quarter unless the proceeds are pledged for the payment of bonds, in which case the tax shall terminate as otherwise provided by law.

(d)(1)(A) The ballot may also indicate designated uses of the revenues derived from the sales or use tax.

(B) If the tax is approved, the proceeds shall only be used for the designated purposes.

(2) The proceeds may be used for other designated purposes if the electors approve a change in the designated use of the revenues by vote under this subsection.

(3)(A) The governing body of a city may refer to the voters a change in the designated use of revenues derived from a sales or use tax that was approved by the voters.

(B) If the governing body of a city refers a change in the designated use of revenues derived from a sales or use tax to the voters, the governing body shall:

(i) Notify the county board of election commissioners that the measure has been referred to the voters; and

(ii) Submit a copy of the ballot title to the county board of election commissioners.

(C)(i) An election to change the designated use of revenues derived from a sales or use tax shall be conducted in the manner provided by law for all other municipal elections.

(ii) The results of an election under this subsection shall be certified, proclaimed, and subject to challenge under the procedures stated in § 26-75-309.

(4) If the voters approve a change in the designated use of revenues derived from a sales or use tax, the change in the designated use shall apply to all revenues collected on the first day of the calendar month following the expiration of the thirty-day challenge period under § 26-75-309.

(5)(A) If the voters do not approve a change in the designated use of revenues derived from a sales or use tax, the tax shall continue to be collected, and the revenues derived from the tax shall continue to be used for the purposes indicated in the ballot for the tax.

(B) An election to change the designated use of revenues derived from a sales or use tax shall not constitute an election on the levy of the tax.

(6) Any city that has levied a local sales and use tax under this subchapter with a portion of the revenues derived from the tax pledged to secure lease rentals or bonds may not change the tax to reduce the pledge in favor of the lease or bonds.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1991, No. 765, § 18; 2005, No. 1269, § 2; 2005, No. 2145, § 72; 2007, No. 116, § 7; 2007, No. 1049, § 94.

Amendments. The 2005 amendment by No. 1269 added (c) and (d).

The 2005 amendment by No. 2145 inserted the subdivision (1), (2)(A) and (3) designations in (a); and added (a)(2)(B).

The 2007 amendment, by No. 116, in (a)(1), inserted “the filing of a petition

described in § 26-75-207(b) or on the date of” and “filing of a petition described in § 26-75-207(b) or.”

The 2007 amendment by No. 1049 substituted “calling and holding of a special election on the question in accordance with § 7-5-103(b)” for “calling of a special election on the question” in (a)(1); and rewrote (a)(2).

CASE NOTES

Cited: North Little Rock v. Graham, 278 Ark. 547, 647 S.W.2d 452 (1983).

26-75-309. Effective date of ordinance.

In order to provide time for the preparations for election set forth in this subchapter and to provide for the accomplishment of the administrative duties of the Director of the Department of Finance and Administration, the following effective dates are applicable with reference to any such ordinance levying such tax:

(1)(A) The ordinance or petition described in § 26-75-307 levying the tax shall not be effective until after the election has been held.

(B) Following the election, the mayor of the city shall issue his or her proclamation of the results of the election with reference to the local sales and use tax, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city.

(C) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county where the city is located within thirty (30) days of the date of publication of the proclamation.

(D)(i) The mayor of the city shall notify the director after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(ii) If no election challenge is filed within the thirty-day challenge period, the ordinance or petition described in § 26-75-307 shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the full thirty-day period of challenge.

(E) The rate change shall become applicable on the first day of a quarter after one hundred twenty (120) days' notice by the director to sellers on a purchase from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog; and

(2)(A) In the event of an election contest, the tax shall be collected as prescribed in subdivision (1) of this section unless enjoined by a court order.

(B) A hearing of these matters of litigation shall be advanced on the docket of the court and disposed of at the earliest practicable time.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1993, No. 266, § 5; 1995, No. 565, § 9; 2003, No. 1273, §§ 60, 61; 2007, No. 116, § 9.

Amendments. The 2003 amendment added (1)(D)(i) and redesignated former (1)(D) as present (1)(D)(ii); in (1)(D)(ii), substituted "the thirty-day challenge period" for "this period" and substituted "after a minimum of sixty (60) days' notice by the director to sellers and after" for "subsequent to"; and added (1)(E).

The 2007 amendment inserted "or petition described in § 26-75-307" in (1)(A) and (1)(D)(ii); in (1)(B), inserted gender-neutral language; and, in (1)(C), substituted "circuit court" for "chancery court".

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Ef-

fective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agree-

ment. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

CASE NOTES

Cited: North Little Rock v. Graham, 278 Ark. 547, 647 S.W.2d 452 (1983).

26-75-310. Abolishment of tax.

(a)(1) In any city in which a local sales and use tax has been adopted in the manner provided for in this subchapter and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this subchapter, that portion of the tax pledged to lease rentals or bonds shall not be abolished so long as the lease is effective or any of the bonds are outstanding.

(2) The bonds shall not be deemed outstanding to the extent that there are sufficient tax collections set aside to pay the bonds when due.

(b) The city may abolish all or that portion of the sales and use tax that is not pledged to lease rentals during which the lease is effective or to outstanding bonds:

(1) By a roll call vote of two-thirds ($\frac{2}{3}$) of all members elected to the governing body of the city, excluding the mayor, if the governing body of the city has determined that the purposes of the tax cannot be fulfilled or cannot continue to be fulfilled; or

(2) After an election called by:

(A) Action of the city's governing body; or

(B) A petition of the qualified voters in the city.

(c) The initiative procedures in Arkansas Constitution, Article 5, § 1, and any ordinances of the city's governing initiative procedures shall

govern the petition of the qualified voters under subsection (b) of this section and the calling and holding of an election concerning the abolishment of the tax.

(d) The governing body of the city may call for an election under subsection (b) of this section according to the procedures set forth in this subchapter for the calling of the initial election on the question.

(e)(1) The ballot title for use in the election under subsection (b) of this section shall be substantially the same as indicated in § 26-75-308(b), except that the word "ABOLITION" shall be substituted for the word "ADOPTION" as it appears in the ballot title set forth in § 26-75-308(b).

(2) A ballot title that contains a question for qualified voters on whether to continue the levy of a local sales and use tax complies with this subsection.

(f) The effective dates of any affirmative vote by the qualified voters to abolish the tax under subsection (b) of this section shall correspond to the dates indicated in § 26-75-309 for the initial effective date of the tax.

(g)(1)(A) Beginning on the effective date of this subdivision (g)(1)(A) and ending on the effective date of subdivision (g)(1)(B) of this section, the effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (b) of this section shall be on the first day of the calendar quarter after the expiration of thirty (30) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the Director of the Department of Finance and Administration certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(B)(i) Except as provided in subdivision (g)(1)(A) of this section, the effective date of any affirmative vote by the governing body of the city to abolish the tax under subsection (b) of this section shall be on the first day of the calendar quarter after the expiration of ninety (90) days from the date a written statement signed by the chief executive officer of the city abolishing the tax is filed with the director certifying that the governing body of the city has adopted an ordinance abolishing the tax.

(ii) Subdivision (g)(1)(B)(i) of this section shall be effective on the first day of the first calendar quarter following the effective date of the Streamlined Sales and Use Tax Agreement, which becomes effective when at least ten (10) states comprising at least twenty percent (20%) of the total population as determined by the 2000 Federal Decennial Census of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.

(2) A copy of the ordinance shall be attached to the certificate.

History. Acts 1975, No. 990, § 2; 1983, No. 722, § 2; A.S.A. 1947, § 19-4514; Acts 2005, No. 1270, § 2.

A.C.R.C. Notes. Regarding the language “the effective date of the Streamlined Sales and Use Tax Agreement” in subdivision (g)(1)(B)(ii) of this section, the

agreement went into effect on October 1, 2005, and Arkansas became a full member of the agreement effective January 1, 2008. See Acts 2007, No. 180, § 1.

Amendments. The 2005 amendment rewrote this section.

CASE NOTES

Cited: North Little Rock v. Graham, 278 Ark. 547, 647 S.W.2d 452 (1983).

26-75-311. Notification required.

(a)(1) As soon as is practicable, and no later than ten (10) days following each of the events set forth in the ordinance with reference to the procedure for the adoption or abolition of such tax and the effective dates of such action, the city clerk of the city shall notify the Director of the Department of Finance and Administration of such event.

(2) Accompanying the first of any such notices, the city clerk shall send to the director a map of the city clearly showing the boundaries of the city.

(b)(1) If any such city in which a local sales and use tax has been imposed in the manner provided for in this subchapter shall thereafter change or alter its boundaries, the city clerk of the city shall forward to the director at least ninety (90) days before the effective date a certified copy of the ordinance adding or detaching territory from the city, which shall be accompanied by a map clearly showing the territory added or detached.

(2) After receipt of the ordinance and the map, the tax imposed under this subchapter shall be effective in the added territory or abolished in the detached territory on the first day of the first month of the calendar quarter following the expiration of thirty (30) days from the date that the annexation or detachment becomes effective or after a minimum of sixty (60) days’ notice by the director to sellers, whichever expires last.

History. Acts 1975, No. 990, § 2; A.S.A. 1947, § 19-4514; Acts 1995, No. 565, § 10; 2003, No. 383, § 6; 2003, No. 1273, § 62.

Amendments. The 2003 amendment by No. 383 rewrote this section.

The 2003 amendment by No. 1273 redesignated former (b) as present (b)(1) and (b)(2); in present (b)(1), substituted “Director of the Department of Finance and Administration” for “director,” inserted “at least ninety (90) days before the effective date” preceding “a certified copy,” and made a minor stylistic change; in present (b)(2), added “or after a minimum of sixty (60) days’ notice by the director to

sellers, whichever expires last” following “becomes effective.”

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce;

and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agree-

ment. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

CASE NOTES

Cited: North Little Rock v. Graham, 278 Ark. 547, 647 S.W.2d 452 (1983).

26-75-312. Collection of tax.

(a)(1) In each city in which a local sales and use tax has been imposed in the manner provided by this subchapter, every retailer shall add the tax imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and the tax imposed by this subchapter to his or her sale price, and when added, the combined tax shall:

- (A) Constitute a part of the price;
- (B) Be a debt of the purchaser to the retailer until paid; and
- (C) Be recoverable at law in the same manner as the purchase price.

(2) When the sale price in the city shall involve a fraction of a dollar, the two (2) combined taxes shall be added to the sale price.

(3) A retailer shall be entitled to the same discount with respect to tax remitted under this subchapter as is authorized for the collection

and remission of gross receipts taxes to the State of Arkansas in § 26-52-503.

(b)(1) Any fraction of one cent (1¢) of tax that is less than one-half of one cent ($\frac{1}{2}$ ¢) shall not be collected.

(2) Any fraction of one cent (1¢) of tax equal to one-half of one cent ($\frac{1}{2}$ ¢) or more shall be collected as a whole one cent (1¢) of tax.

(c) In the event the General Assembly or the electors of the state shall either increase or decrease the rate of the state gross receipts tax, the combined rate of state tax and the local sales tax shall be the sum of the two (2) rates.

History. Acts 1975, No. 990, § 2; 1981, No. 133, § 2; 1981, No. 861, § 2; A.S.A. 1947, § 19-4514; Acts 1993, No. 669, § 5; 1997, No. 1176, § 14; 2003, No. 747, § 6; 2003, No. 1273, § 63.

A.C.R.C. Notes. Prior to the amendment by Acts 2003, No. 1273, the section contained a subsection (c) which was neither set out nor deleted by the amendment. Former subsection (c) read:

“(c)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his sales and use tax report.

“(2)(A) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

“(B) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

“(3) This provision applies only to taxes collected by the Director of the Department of Finance and Administration.”

Amendments. The 2003 amendment by No. 747 added subdivision designations to (a)(1)(C); in (a)(1)(C)(i), substituted “Director of the Department of Finance and Administration” for “director,” and made minor stylistic changes; in (a)(1)(C)(ii), substituted “a” for “the same” preceding “discount” and deleted “authorized for the collection and remission of gross receipts taxes to the State of Arkansas as” preceding “authorized.”

The 2003 amendment by No. 1273 redesignated the former second sentence of (a)(1)(C)(i) and (ii) as present (a)(2) and (a)(3), former (a)(2) as (b)(1) and (b)(2), former (a)(3) as present (c); deleted the last sentence in former (a)(3); deleted former (b); deleted “according to a sched-

ule and bracket system formula established by the director” from the end of present (a)(2); and made stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agree-

ment if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance

and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

CASE NOTES

Constitutionality.

Acts 1981, No. 861, which amended this section and § 26-75-303 by reenacting in full in § 26-75-303 the definition of "city" which was being changed, added a new subsection (b) to this section, and contained an emergency clause referring to the immediate need for a stable source of revenue to finance an improvement in needed municipal services, did not contain such a marked lack of information as to amount to a violation of Ark. Const., Art.

5, § 23. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

The effect of Acts 1981, No. 861, which amended this section and § 26-75-303 was to convert Acts 1975, No. 990 into a general law, applicable alike to all cities and towns throughout the state, and consequently, there was no violation of Ark. Const. Amend. 14. *Hall v. Ragland*, 276 Ark. 350, 635 S.W.2d 228 (1982).

Cited: *North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983).

26-75-313. Disposition of funds.

(a) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this subchapter and other subchapters authorizing city sales taxes in each city and shall deposit all such revenues with the Treasurer of State.

(b) Any moneys collected by the director which as indicated by a certified copy of an ordinance of the city previously filed with the director and the Treasurer of State, are pledged to secure the payment of lease rentals or bonds authorized by this subchapter shall not be deposited into the State Treasury but shall be deposited by the Treasurer of State into banks designated by the city as cash funds and transmitted to the city subject to the charges payable to the State of Arkansas set forth in § 26-75-217.

History. Acts 1975, No. 990, § 6; 1983, No. 722, § 4; A.S.A. 1947, § 19-4518; Acts 1997, No. 1176, § 15.

26-75-314. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1975, No. 990, § 9; A.S.A. 1947, § 19-4521.

26-75-315. Existing taxing powers not limited.

No provision of this subchapter shall be so construed to abolish or limit existing powers of taxation of the city.

History. Acts 1975, No. 990, § 8; A.S.A. 1947, § 19-4520.

26-75-316. Excise tax on storage, use, or other consumption.

(a) In every city in which the local sales and use tax has been adopted pursuant to the provisions of this subchapter, there is imposed an excise tax on the storage, use, distribution, or other consumption within the city of tangible personal property and taxable services purchased, leased, or rented from any retailer outside the state after the effective date of the sales and use tax for storage, use, distribution, or other consumption in the city at a rate of one-half of one percent ($\frac{1}{2}\%$) or at the rate of one percent (1%) of the sale price of the property and services, or in the case of leases or rentals of the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(b) The use tax portion of the local sales and use tax shall be collected according to the terms, procedures, and regulations of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., except as otherwise provided.

(c) The tax imposed under this subchapter and the tax imposed under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq. and Arkansas Compensating Tax Act of 1949 § 26-53-101 et seq., shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Director of the Department of Finance and Administration not inconsistent with the provisions of this subchapter.

(d) On and after the effective date of any proposition to abolish such local sales and use tax in any city, the director shall comply with the proposition as provided in this subchapter.

History. Acts 1975, No. 990, § 4; 1983, No. 722, § 3; A.S.A. 1947, § 19-4516; Acts 2003, No. 1273, § 66.

Amendments. The 2003 amendment, in (a), twice inserted “distribution” following “use,” “and taxable services” following “personal property” and “and services” following “the property.”

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by

the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10)

states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules,

regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-75-317. Existing city sales taxes.

(a) All city taxes adopted pursuant to this subchapter, § 26-75-501 et seq., or § 26-75-601 et seq., which are in effect on December 1, 1981, shall remain in full force and effect and are not repealed by the provisions of § 26-75-201 et seq., except as to the administration, collection, enforcement, and operation of the tax as specifically set out in § 26-75-201 et seq.

(b) It is recognized by the General Assembly that several municipalities such as North Little Rock, Siloam Springs, Mountain Home, Conway, Caddo Valley, and others have enacted a sales and use tax pursuant to this subchapter. It is the intent of the General Assembly to affirm the validity of sales and use taxes adopted and enacted by those municipalities. It is provided further that for city sales and use taxes adopted pursuant to these statutes, the procedures for repeal and enforcement as set out in § 26-75-201 et seq., shall be applicable to any such tax adopted by any city pursuant to them.

History. Acts 1981 (1st Ex. Sess.), No. 25, § 12; A.S.A. 1947, § 19-4533.

26-75-318. Administration of Local Sales and Use Tax Trust Fund.

(a)(1) There is created a trust fund for the remittance of local sales and use taxes which shall be known as the "Local Sales and Use Tax Trust Fund".

(2)(A) There is also created a trust fund which shall be known as the "Identification Pending Trust Fund for Local Sales and Use Taxes".

(B)(i) Money reported as local sales and use taxes which was collected in local taxing jurisdictions which are not immediately identifiable and money collected in local jurisdictions which have no tax shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes.

(ii) When a local tax jurisdiction is identified for money which has been deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes, the money shall be transferred to the Local Sales and Use Tax Trust Fund.

(iii) When the total amount in the Identification Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand dollars (\$50,000), the Treasurer of State shall transfer any amount in excess of fifty thousand dollars (\$50,000) to general revenues.

(C)(i) Money reported as local sales and use taxes which was collected by an out-of-state vendor and which is not identifiable shall be deposited into the Identification Pending Trust Fund for Local Sales and Use Taxes. Any such funds so deposited shall not be included for computation of transfer to general revenue in subdivision (a)(2)(B) of this section.

(ii) The Treasurer of State shall distribute unidentified local sales and use taxes collected by out-of-state vendors to the county treasurers and city treasurers as determined by their proportionate share of distribution from the Local Sales and Use Tax Trust Fund on a monthly basis.

(b)(1) The Treasurer of State as the administrator of the Local Sales and Use Tax Trust Fund shall review the flow of moneys through the Local Sales and Use Tax Trust Fund into the State Treasury for the purpose of estimating the amount of the moneys as may be surplus to the immediate requirements of the Local Sales and Use Tax Trust Fund.

(2) After making the estimate, the administrator shall invest the estimated surplus amount in certificates of deposit issued by any financial institution located in the State of Arkansas. All interest income derived from the certificates of deposit shall be credited as trust fund income to the Local Sales and Use Tax Trust Fund.

(3) The Treasurer of State shall monthly transmit to the county treasurers and city treasurers their proportionate share of the interest derived from investment of the Local Sales and Use Tax Trust Fund.

History. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1; 1985, No. 1028, § 1; A.S.A. 1947, §§ 17-2038, 17-2046; Acts 1991, No. 621, § 4.

Publisher's Notes. Acts 1981 (1st Ex. Sess.), No. 26, § 18; 1983, No. 513, § 1;

1985, No. 1028, § 1, are also codified as §§ 26-74-221, 26-74-317, and 26-75-223.

Cross References. Local Sales and Use Tax Trust Fund for refund of taxes, § 19-5-934.

26-75-319. Maximum tax limitation.

(a)(1) Any municipal general sales or use tax levied pursuant to this subchapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(2) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (A) Motor vehicle;
- (B) Aircraft;
- (C) Watercraft;
- (D) Modular home;
- (E) Manufactured home; or
- (F) Mobile home.

(b)(1) Each vendor who is liable for one (1) or more municipal sales or use taxes shall report a combined city sales tax and a combined city use tax on his or her sales and use tax report.

(2) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(c) This section only applies to a tax collected by the Director of the Department of Finance and Administration.

History. Acts 2001, No. 1561, § 1; 2003, No. 1273, § 65.

Amendments. The 2003 amendment redesignated former (a)(1) as present (a) and twice substituted “on the sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes” for “from a single transaction”; redesignated former (a)(2)(A) as present (b)(1), former (a)(2)(B) as present (b)(2), former (a)(2)(C) as present (b)(3) and former (a)(3) as present (c); and deleted former (b).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that

the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agree-

ment. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-75-320. Procedures and penalties for enforcement.

(a) The procedures and penalties used by the Director of the Department of Finance and Administration in enforcing any local tax imposed pursuant to this subchapter shall be the same as for the gross receipts tax and compensating tax, as set out in the Arkansas Tax Procedure Act, § 26-18-101 et seq., except as specifically set out in this subchapter.

(b)(1) When property is seized by the director under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and when the taxpayer is also delinquent in payment of any tax imposed by this subchapter, the director shall sell sufficient property to pay the delinquent taxes and penalty due to any city under this subchapter in addition to that required to pay any amount due to the state under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(2) The proceeds from the sale shall first be applied to all sums due to the state, and the remainder, if any, shall be applied to all sums due to the city.

History. Acts 2001, No. 1561, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

26-75-321. Rebate.

A city shall provide in its ordinance authorized by this subchapter for a rebate from the city for taxes collected under this subchapter in excess of the tax on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price on the sale of a:

- (1) Motor vehicle;
- (2) Aircraft;
- (3) Watercraft;
- (4) Modular home;
- (5) Manufactured home; or
- (6) Mobile home.

History. Acts 2003, No. 1273, § 64.

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to

become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

SUBCHAPTER 4 — TEMPORARY TAX FOR ACQUISITION, CONSTRUCTION, OR IMPROVEMENT OF PARKS

SECTION.

- 26-75-401. Authority supplemental.
- 26-75-402. Other provisions applicable.
- 26-75-403. Tax authorized.
- 26-75-404. Election requirements and procedure.
- 26-75-405. Items subject to tax.

SECTION.

- 26-75-406. Manner of collection.
- 26-75-407. Disposition of taxes.
- 26-75-408. Use of funds.
- 26-75-409. Administration, etc.
- 26-75-410. Rules and regulations.
- 26-75-411. Definition.

Effective Dates. Acts 1985, No. 488, § 13: Mar. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that public parks and recreation facilities in many cities and towns are inadequate to meet the needs of residents of such cities and towns; that it is urgent that such cities and towns be provided an appropriate method of financing such essential facilities to meet the needs of residents and that this Act is designed to provide a method for financing such facilities, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 565, § 25: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are in excess of 300 different local sales and use taxes in effect; that many of these taxes are for specified duration; that notification of affected taxpayers of the beginning and ending of these taxes is time consuming and costly; that requiring local sales and use taxes to begin and end on a calendar quarter basis will ease the administrative burden of taxpayers and the cost to the State of Arkansas; and that an effective date of July 1, 1995 is necessary to achieve the purpose of this legislation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective

date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and

Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of

the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-75-401. Authority supplemental.

The authority granted in this subchapter to cities and towns to levy a gross receipts and compensating tax shall be supplemental and in addition to any other authority of cities and towns to levy gross receipts and compensating taxes.

History. Acts 1985, No. 488, § 9; A.S.A. 1947, § 19-3655.

26-75-402. Other provisions applicable.

(a) The provisions of §§ 26-74-220, 26-75-207 — 26-75-212, and 26-75-222 shall be applicable to any tax levied under this subchapter.

(b) Section 26-75-213 shall be applicable to the resubmission of the question of the levy or repeal of the local sales and use tax authorized by this subchapter.

History. Acts 1985, No. 488, §§ 5, 12; A.S.A. 1947, §§ 19-3651, 19-3657.

26-75-403. Tax authorized.

(a)(1) The governing body of any city of the first class, city of the second class, or incorporated town in the state by ordinance may levy a temporary local sales and use tax of either one percent (1%) or one-half of one percent ($\frac{1}{2}\%$) for the purpose of providing funds for the acquisition, construction, or improvement of parks and recreation facilities within the city or town.

(2) Such a tax may be levied for any period not to exceed two (2) years.

(b) The ordinance levying the tax shall state the period for which the tax shall be levied and collected and shall contain a description of parks and recreation facilities to be acquired, constructed, or improved with the revenues from the tax.

(c) Any tax levied pursuant to the authority granted in this section shall be effective only after approval of the tax by the qualified electors of such city or town in the manner provided in this subchapter.

History. Acts 1985, No. 488, § 1; A.S.A. 1947, § 19-3647.

26-75-404. Election requirements and procedure.

(a)(1) When the governing body of any city or town adopts an ordinance levying a local sales and use tax as authorized in this subchapter, the governing body either in the ordinance levying the tax or in a separate ordinance shall provide for submission of the question of the levy to the qualified electors of the city or town either at the next regular municipal election or at a special election.

(2) If the ordinance provides for submitting the question at a special election, the election shall be called in accordance with § 7-5-103(b) for a date not more than ninety (90) days from the date of the adoption of the ordinance calling the special election.

(b) The governing body of the city or town shall notify the county board of election commissioners that the question of the levy of the tax has been referred to a vote of the people at the next regular municipal election or at a special election to be held on the date set by ordinance and shall submit a copy of the ballot title to the county board of election commissioners.

(c) The ballot title to be used at the election shall be in substantially the following form:

“[] FOR the levy of a temporary one percent (1%) (one-half of one percent ($\frac{1}{2}$ of 1%)) local sales and use tax for a period ofwithin (name of city) for construction and improvement of public parks and recreation facilities.”

“[] AGAINST the levy of a temporary one percent (1%) (one-half of one percent ($\frac{1}{2}$ of 1%)) local sales and use tax for a period ofwithin (name of city) for construction and improvement of public parks and recreation facilities.”

(d)(1) Following the election, the mayor of the city or town shall issue a proclamation of the results of the election, and the proclamation shall be published one (1) time in a newspaper having general circulation in the city or town.

(2)(A) If a majority of the electors voting on the issue vote against the levy of the tax, the tax shall not be levied, and the question of the levy of a tax under this subchapter shall not again be submitted to the electors of the city or town for one (1) year.

(B) If a majority of the electors voting on the issue vote for the levy of the tax, the tax shall be levied and collected as provided for in this subchapter for the period prescribed in the ordinance.

(3)(A) A person desiring to challenge the results of the election shall file the challenge in the circuit court of the county where the city or town is located within thirty (30) days of the date of publication of the proclamation.

(B)(i)(a) The mayor of the city or town shall notify the Director of the Department of Finance and Administration of the rate change

after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(b) If no election challenge is filed within the thirty-day challenge period, the ordinance shall become effective on the first day of the first month of the calendar quarter after a minimum of sixty (60) days' notice by the director to sellers and after the expiration of the thirty-day period for challenge of the results of the election.

(c) In the case of a purchase made from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog, the applicable date will be the first day of the quarter after a minimum of one hundred twenty (120) days' notice by the director to sellers.

(ii) In the event of an election contest, the tax shall be collected as prescribed in subdivision (d)(3)(B)(i) of this section.

(e)(1) If a majority of electors voting on the issue vote "FOR" the levy of the tax, a copy of the mayor's proclamation of the results of the election shall be transmitted to the director within ten (10) days after the election.

(2)(A) At the time of transmitting the proclamation, the clerk shall also send to the director a map of the city or town clearly showing the boundaries of the city or town.

(B)(i) If any such city or town shall thereafter change or alter its boundaries, the city or town clerk shall forward to the director ninety (90) days before the effective date of the boundary changes a certified copy of the ordinance adding or detaching territory from the city or town, and the ordinance shall be accompanied by a map clearly showing the territory added or detached.

(ii) After receipt of the ordinance and map, the tax imposed under this subchapter shall be effective in the added territory or abolished in the detached territory on the first day of the first month of the calendar quarter following the expiration of thirty (30) days from the date that the annexation or detachment becomes effective or after a minimum of sixty (60) days' notice by the director to sellers, whichever expires last.

History. Acts 1985, No. 488, § 2; A.S.A. 1947, § 19-3648; Acts 1993, No. 266, § 6; 1995, No. 565, §§ 11, 12; 2003, No. 383, § 7; 2003, No. 1273, § 67; 2005, No. 2145, §§ 73, 74; 2007, No. 1049, § 95.

Amendments. The 2003 amendment by No. 383 rewrote (e).

The 2003 amendment by No. 1273 substituted "circuit" for "chancery" preceding "court" in (d)(3)(A), added (d)(3)(B)(i)(a), redesignated former (d)(3)(B)(i) as present (d)(3)(B)(i)(b), and added present (d)(3)(B)(i)(c); in (e), made stylistic changes; in (e)(2)(B)(i), inserted "ninety (90) days before the effective date of the boundary changes"; and in (e)(2)(B)(ii),

added "or after a minimum of sixty (60) days' notice by the director to sellers, whichever expires last."

The 2005 amendment redesignated former (a)(2) as present (a)(2)(A); and added (a)(2)(B).

The 2007 amendment rewrote (a)(2).

Effective Dates. Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid

growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if

the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-75-405. Items subject to tax.

(a) When any city or town levies a sales and use tax pursuant to the authority granted in this subchapter, the tax shall be levied upon the same sales and the same items and services as are subject to taxation under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) The local sales and use tax authorized by this subchapter will apply in the same manner as set out in § 26-75-216 as § 26-75-216 modifies the levy and collection of the tax.

History. Acts 1985, No. 488, § 3; A.S.A. 1947, § 19-3649; Acts 2003, No. 1273, § 68.

Amendments. The 2003 amendment, in (a), inserted "and services" following "the same items" and "of 1941" following "Arkansas Gross Receipts Act" and inserted "of 1949" following "Arkansas Compensating Tax Act."

Effective Dates. Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008,

§ 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce;

and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agree-

ment. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-75-406. Manner of collection.

(a)(1) In each city or town in which a local sales and use tax has been imposed in the manner provided by this subchapter, every retailer shall add the tax imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and this subchapter to the retailer's sale price.

(2) When added, the combined tax shall:

(A) Constitute a part of the price;

(B) Be a debt of the purchaser to the retailer until paid; and

(C) Be recoverable at law in the same manner as the purchase price.

(b)(1) Retailers shall collect and remit the tax levied by any city or town pursuant to this subchapter in the same manner and at the same time as the state gross receipts tax or compensating tax is collected and remitted.

(2) The tax levied in this section on motor vehicles shall be collected by the Director of the Department of Finance and Administration directly from the purchaser in the same manner as the state gross receipts tax.

(c)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on the vendor's sales and use tax report.

(2) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(4) This provision applies only to taxes collected by the director.

History. Acts 1985, No. 488, § 4; A.S.A. 1947, § 19-3650; Acts 1997, No. 1176, § 16.

26-75-407. Disposition of taxes.

(a) The Director of the Department of Finance and Administration shall deposit all local sales and use taxes collected under this subchapter with the Treasurer of State.

(b) All deposits and transfers shall be made in the same manner and subject to the same charges and retainage as set forth in § 26-74-214.

History. Acts 1985, No. 488, § 7; A.S.A. 1947, § 19-3653.

26-75-408. Use of funds.

(a) All revenues received by a city or town from taxes levied pursuant to the authority granted in this subchapter shall be deposited into the city or town treasury and credited to a special account and shall be used for the acquisition, construction, or improvement of parks and recreational facilities within the municipality as prescribed in the levying ordinance.

(b) Any balance remaining in the fund after the projects prescribed in the levying ordinance have been completed and paid for shall be used for maintenance and upkeep of municipal parks and recreational facilities.

History. Acts 1985, No. 488, § 8; A.S.A. 1947, § 19-3654.

26-75-409. Administration, etc.

(a)(1) On and after the effective date of any tax imposed pursuant to the provisions of this subchapter, the Director of the Department of Finance and Administration shall perform all functions incidental to the administration, collection, enforcement, and operation of the tax.

(2) The director shall collect taxes levied pursuant to this subchapter at the same time and in the same manner as the director collects the state gross receipts tax and the state compensating tax.

(b) When notified that any tax levied under this subchapter has expired or has been abolished, the director shall cease to collect the tax as provided in this subchapter.

History. Acts 1985, No. 488, § 6; A.S.A. 1947, § 19-3652.

26-75-410. Rules and regulations.

The Director of the Department of Finance and Administration shall adopt appropriate rules and regulations not inconsistent with the provisions of this subchapter to implement the enforcement, administration, and collection of the taxes authorized in this subchapter.

History. Acts 1985, No. 488, § 10; A.S.A. 1947, § 19-3656.

26-75-411. Definition.

As used in this subchapter, "calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1.

History. Acts 1995, No. 565, § 20.

SUBCHAPTER 5 — GROSS RECEIPTS TAX GENERALLY

SECTION.

- 26-75-501. Tax additional.
- 26-75-502. Authority to levy.
- 26-75-503. Election requirements.
- 26-75-504. Certification of tax.

SECTION.

- 26-75-505. Collection of tax.
- 26-75-506. Disposition of revenues.
- 26-75-507. Repeal of tax.
- 26-75-508. Levy of use tax.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 4, § 8: Feb. 14, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities in this State which have or may hereafter be designated as Model Cities under the Demonstration Cities and Metropolitan Development Act of 1966 need additional revenues to enable such cities and towns to continue to operate the government in such cities and furnish services to the residents thereof which are essential to the public health and welfare of said residents and that this Act is immediately necessary to provide the additional revenues for such cities. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1995, No. 211, § 6: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there exists some confusion among taxpayers in Texarkana, Arkansas concerning application of city sales and use tax; that this act will clarify that city use tax applies to out of state purchases

by Texarkana, Arkansas residents; and that an effective date of July 1, 1995 is necessary for the efficient administration of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the

2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses

additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport Act are suffering material adverse consequences under current procedures; and that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-75-501. Tax additional.

The tax authorized by this subchapter shall be in addition to all other fees and taxes which cities of the first class and cities of the second class are now authorized by law to levy, whether levied in the form of excise, license, or privilege taxes.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 5; A.S.A. 1947, § 19-4512.

26-75-502. Authority to levy.

(a) Any city of the first class or city of the second class having a population of not more than forty thousand (40,000) persons according to the most recent federal census and that has been or may in the future be designated as a model city under the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. § 3301 et seq., by an ordinance passed by its governing body, may levy a tax for the benefit of

the city of not to exceed one percent (1%) on gross proceeds or gross receipts derived from sales, as such sales and gross proceeds or gross receipts are defined in the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) Rules and regulations promulgated by the Director of the Department of Finance and Administration for the State of Arkansas in connection with the collection and administration of the state gross receipts tax shall be equally applicable with respect to any tax levied under this subchapter.

(c) The ordinance authorizing the levy of the tax shall set the rate of the tax within the limits authorized in this subchapter.

(d) The operation of any ordinance levying the tax shall be subject to approval of the voters as required in § 26-75-503.

(e) After initial adoption of the tax as provided in this subchapter, that tax rate may be increased by the city under the same procedure but not to exceed the maximum prescribed in this subchapter.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 1; A.S.A. 1947, § 19-4508; Acts 2003, No. 1273, § 69.

Amendments. The 2003 amendment, in (a), inserted “42 U.S.C. § 3301 et seq.” following “Metropolitan Development Act of 1966,” “of 1941” following “Arkansas Gross Receipts Act” and “and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.” and deleted “within the city” following “from sales.”

Effective Dates. Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agree-

ment will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date

provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

26-75-503. Election requirements.

(a) An ordinance of a city of the first class or city of the second class as provided in § 26-75-502 shall not become operative until approved in an election in the city levying such a tax.

(b) An election shall be held in the levying city on the question of whether the ordinance shall become effective within sixty (60) days after the receipt of a certified copy of the ordinance and shall be conducted in the manner prescribed by law for holding state, county, or municipal elections, so far as the manner may be applicable.

(c) A majority vote of those voting in the election shall determine whether the ordinance shall be operative.

(d)(1) If the majority vote "FOR" the ordinance, it shall be deemed to be operative on the date that the governing body of the city makes its official canvass of the election returns.

(2) However, no such tax shall be collected under any such ordinance until the first day of a calendar quarter after a minimum of sixty (60) days' notice by the Director of the Department of Finance and Administration to sellers.

(3) For a purchase made from a printed catalog in which the purchaser computed the tax based upon local tax rates published in the catalog, the tax shall be collected on the first day of the quarter after a minimum of one hundred twenty (120) days' notice by the director to sellers.

(e) Prior to the election the ordinance shall be published one (1) time a week for at least three (3) weeks in at least one (1) newspaper published in the city in which the election is to be held.

(f) If a city shall hold an election as provided in this section and if the ordinance shall be rejected, no other election on the ordinance shall be held by the city for a period of one (1) year from the date of holding the prior election.

History. Acts 1968 (1st Ex Sess.) No. 4, § 2; A.S.A. 1947, § 19-4509; Acts 2003, No. 1273, § 70.

Amendments. The 2003 amendment redesignated former (d) as (d)(1) and (d)(2); substituted "calendar quarter after a minimum of sixty (60) days' notice by the director to sellers." for "month occurring at least thirty (30) days after the operative date" in present (d)(2); and added (d)(3).

Effective Dates. Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that

the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been

found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in

the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Taxation, 2003 Arkansas General Assembly, Taxation, Sales and Use Tax, 26 U. Ark. Little Rock L. Rev. 498.

26-75-504. Certification of tax.

When the levy of the tax authorized in this subchapter has been approved in a city of the first class or city of the second class as provided in this subchapter, the governing body of the city shall certify to the Director of the Department of Finance and Administration that such tax has become operative and shall furnish to the director the rate of the tax, including any limitations thereon, and the date on which it shall become operative.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 3; A.S.A. 1947, § 19-4510.

26-75-505. Collection of tax.

(a) The Director of the Department of Finance and Administration shall collect the tax levied under this subchapter concurrently with and in the same manner as taxes collected under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b) This additional tax shall be collected by the director for the benefit of the city and shall be deposited into the Local Sales and Use Tax Trust Fund for distribution back to the city.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 3; A.S.A. 1947, § 19-4510; Acts 1989, No. 798, § 1; 1995, No. 211, § 2.

26-75-506. Disposition of revenues.

(a) All revenues collected by the Director of the Department of Finance and Administration pursuant to the provisions of this subchapter, less three percent (3%) thereof which shall be deducted as a cost of collection and deposited into the State Treasury to the credit of the Constitutional Officer's Fund and the State Central Services Fund, shall be remitted by the director to the levying city at the same time the director remits sales tax revenues to the State Treasury.

(b) All funds remitted to the levying city under the provisions of this subchapter shall be deposited into the city general fund of the levying city and used for the purposes prescribed by law.

(c)(1) Except for revenue collected under subdivision (c)(2) of this section, money collected from a tax on aviation fuel levied by a city where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport located within the levying city or within the county and transmitted to the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 3; A.S.A. 1947, § 19-4510; Acts 2007, No. 166, § 6. **Amendments.** The 2007 amendment added (c).

26-75-507. Repeal of tax.

Any ordinance of a city adopted pursuant to the authority granted in this subchapter may be repealed in the same manner as is provided in this subchapter for its adoption.

History. Acts 1968 (1st Ex. Sess.), No. 4, § 4; A.S.A. 1947, § 19-4511.

26-75-508. Levy of use tax.

(a) In all cities of the first class or cities of the second class that have adopted an ordinance prior to January 1, 1995, levying a local sales tax as provided in § 26-75-502, there is also levied a local compensating use tax.

(b) The rate of the use tax levied by this section shall be equal to the rate of the sales tax levied by the city.

(c) The use tax levied under this section and the local sales tax levied under § 26-75-502 shall be administered and enforced in accordance with the provisions of §§ 26-75-223 and 26-75-312.

History. Acts 1995, No. 211, § 1.

SUBCHAPTER 6 — ADVERTISING AND PROMOTION COMMISSION ACT

SECTION.

- 26-75-601. Penalty.
- 26-75-602. Gross receipts taxes authorized.
- 26-75-603. Collection of tax.
- 26-75-604. Disposition of revenues.
- 26-75-605. Advertising and promotion commissions.
- 26-75-606. Use of funds collected.
- 26-75-607. Authority to issue bonds.
- 26-75-608. Issuance of bonds.

SECTION.

- 26-75-609. Execution of bonds.
- 26-75-610. Nature of bonds generally.
- 26-75-611. Bonds as securities.
- 26-75-612. Tax exemption for bonds.
- 26-75-613. Pledge of revenues.
- 26-75-614. Trust indenture.
- 26-75-615. Sale of bonds.
- 26-75-616. No personal liability.
- 26-75-617. Refunding bonds.
- 26-75-618. Title.

Publisher's Notes. Acts 1993, No. 364, § 12, provided that the amendments made by that act shall not be deemed to impair the validity of any tax levied under the authority of Arkansas Code, Title 26, Chapter 75, Subchapter 6, prior to March 4, 1993.

Cross References. Counties, levy of gross receipts tax on hotels and restaurants by, § 14-20-112.

Effective Dates. Acts 1965, No. 30, § 5: June 8, 1965. Emergency clause provided: "It has been found and is declared by the General Assembly that cities having a population of 25,000 inhabitants and more are critically in need of revenues for the promotion of the economic well being of the inhabitants thereof in order to prevent decline and insure growth and progress, and that enactment of this measure will provide an appropriate method of securing public interest. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1965, No. 185, § 9: Mar. 10, 1965. Emergency clause provided: "It has been found and is declared by the General Assembly that cities having a population of 25,000 inhabitants and more are critically in need of revenues for the promotion of the economic well being of the inhabitants thereof to prevent decline and insure growth and progress, and that enactment of this measure will provide an appropriate method of securing such public interest. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace,

health and safety, shall take effect and be in force from the date of its approval."

Acts 1970 (1st Ex. Sess.), No. 58, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1971, No. 188, § 4: Mar. 2, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the improvements contemplated by, and the purposes of this Act, are essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these improvements and purposes can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1971, No. 534, § 4: Apr. 5, 1971. Emergency clause provided: "It is hereby

found and determined by the General Assembly that cities of the first class of this State are in need of additional moneys for the various purposes for which such cities are now authorized to levy sales taxes upon hotels, motels, cafes, and restaurants, and that immediate passage of this Act is necessary in order to enable cities, in the manner provided in Act 185 of 1965, as amended, to provide for a levy of a two percent (2%) tax upon the gross receipts or gross proceeds of hotels, motels, cafes, restaurants, and similar establishments. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the state of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 977, § 5: Apr. 9, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that adequate tourist facilities are essential to the continued economic growth and development of the State and its municipalities and that the authority conferred by this Act is necessary to the financing of certain tourist facilities. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be effective from and after its passage and approval."

Acts 1977, No. 178, § 8: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain cities within the State

are in dire need of additional funds to provide essential services and facilities of the city; that the most appropriate way for such cities to increase revenues for this purpose is the levy of an increased gross receipts tax on the gross receipts derived from certain business within the city; that this Act is designed to specifically authorize the levy of a gross receipts tax or an additional gross receipts tax to provide much needed revenues to the levying city and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 727, § 5: Apr. 3, 1979. Emergency clause provided: "It has been found and it is hereby declared that certain municipalities of this State are in great and immediate need of funds for the development of river ports and related facilities and that revenues derived from the Hotel and Restaurant Tax are the only possible resource for the financing of such development. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval."

Acts 1981, No. 20, § 4: Feb. 4, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that some cities in the State are in urgent need of additional revenues to finance tourist oriented facilities to promote the tourist industry in the State and to thereby produce much needed general revenue receipts for the State of Arkansas; that this Act is designed to authorize certain cities to increase the tax on gross receipts of hotels, motels and restaurants in such cities to produce such essential revenues and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not

feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 542, § 3: became law without Governor's signature, Mar. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that no adequate penalty exists for the failure to pay the additional one percent (1%) sales tax levied by cities of the first class in which is located a city park of one thousand acres or more; that such penalty is necessary for the proper enforcement of such tax and that this Act is immediately necessary to provide such penalty. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 626, § 7: Mar. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that some cities in the state are in urgent need of additional revenues to finance tourist oriented facilities to promote the tourist industry in the state and to thereby produce much needed general revenue receipts for the state of Arkansas; that this act is designed to authorize certain cities to increase the tax on gross receipts of hotels, motels and restaurants in such cities to produce such essential revenues and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 7, § 7: Nov. 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, meeting in Third Extraordinary Session, that monies provided by the Seventy-Seventh General Assembly meeting in First

Extraordinary Session, for payment of refunds of local sales and use taxes to local governments are insufficient to continue to provide essential governmental services and that delay in the effective date of this Act could cause irreparable harm to the proper administration and provision of essential governmental services. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 726, § 6: Mar. 25, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to revise current law relating to municipal advertising and promotion commissions and relating to the authorized uses of local revenues derived from local sales taxes levied on gross receipts of hotels, motels and restaurants; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 347, § 6: Mar. 3, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to revise current law relating to the advertising and promotion commissions of municipalities and relating to the authorized uses of local revenues derived from local sales taxes levied on gross receipts of hotels, motels, and restaurants, and that the provisions of this act are designed to accomplish this purpose and are immediately needed in order to clarify the methods of operating of such commissions and administration of such taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 931, § 5: Apr. 5, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to clarify current law relating to the method by which a hotel and restaurant tax shall be subject to referendum and that the provi-

sions of this act are designed to accomplish this purpose and are immediately needed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 913, § 5: Mar. 28, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that advertising and promotion commission members should represent as large as cross-section of the community as possible; that the law restricts somewhat the capacity of persons to serve; and that it is immediately necessary for this process to be opened up to other persons. Therefore, in order to broaden community representation, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved or vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the vote is overridden, it shall become effective on the date the last house overrides the vote."

Acts 2005, No. 2314, § 3: Apr. 14, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing law restricts the ability of a county to levy an advertising and promotion tax within the county; that existing law restricts the ability of a municipality to collect advertising and promotion tax; that advertising and promotion tax provides a source of municipality and county funds for promot-

ing tourism and enhances the state's economy; and that this act is immediately necessary in order to provide cities and counties with the ability to control local finances. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 473, § 4: Mar. 23, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that tourist season is rapidly approaching and cities and towns depend on the local tax revenue generated through local hotels, motels, restaurants, or similar establishments; that the law as currently written does not allow the local government the flexibility to collect the tax in a manner that reflects local business establishments; and that this act is necessary because it is imperative to the successful operation of local government to capture the tax revenue from the approaching tourist season. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

A.L.R. Hotel-motel room occupancy tax. 58 A.L.R.4th 274.

U. Ark. Little Rock L.J. Note, Revenue Bonds — The Election Requirement:

City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 U. Ark. Little Rock L.J. 63.

26-75-601. Penalty.

Any person or entity liable for the additional one percent (1%) gross receipts tax authorized by this subchapter to be levied by cities of the first class in which is located a city park of one thousand (1,000) acres or more shall be subject to a fine of fifty dollars (\$50.00) per day for each day the person or entity fails to remit the tax after its due date.

History. Acts 1981, No. 542, § 1; A.S.A. 1947, § 19-4614.1.

26-75-602. Gross receipts taxes authorized.

(a) Any city of the first class, city of the second class, or incorporated town by ordinance of the governing body thereof may levy a tax not to exceed three percent (3%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(b) Any city of the first class in which is located a city park of one thousand (1,000) acres or more in a like manner may levy an additional tax of one percent (1%) upon the gross receipts or gross proceeds identified in subsection (c) of this section. Revenues collected from this additional tax shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(c) The tax authorized in this subchapter shall be upon any one (1) or more of the following, as specified in the levying ordinance:

(1) The gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel, or short-term condominium rental accommodations for sleeping, meeting, or party room facilities for profit in such city or town, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and

(2) The portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses as shall be defined in the levying ordinance from the sale of prepared food and beverages for on-premises or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

History. Acts 1965, No. 185, § 1; 1969, No. 123, § 1; 1971, No. 534, § 1; 1977, No. 178, § 1; 1979, No. 926, § 1; 1981, No. 20, § 1; 1981, No. 957, § 1; A.S.A. 1947, §§ 19-4613, 19-4613.1; Acts 1989, No. 626, § 2; 1991, No. 726, § 1; 1993, No. 364, § 1; 1995, No. 300, §§ 1, 2; 1995, No. 931, § 1; 2007, No. 473, § 2.

Publisher's Notes. Acts 1981, No. 957

became law without the governor's signature on April 8, 1981.

Acts 1985, No. 976, confirmed and continued the authority of municipalities to levy the hotel and restaurant tax and to pledge the proceeds of that tax to tourism bonds by ordinance subject to referendum but without a prior vote of the people. It declared the proceeds of any hotel and

restaurant tax pledged to tourism bonds issued under Acts 1971, No. 380, or bonds issued under the Local Government Capital Improvement Revenue Bond Act of 1985, for tourism projects, to be project revenues of the project financed. It further provided that the hotel and restaurant tax is not a "tax" as taxes are normally understood and intended for government support but is a special levy paid and collected by those persons and entities peculiarly associated with and benefited by tourism. However, since the Local Government Revenue Bond Act of 1985, § 14-164-301 et seq., makes specific reference to hotel and restaurant taxes and the Local Government Capital Improvement Revenue Bond Act of 1985, § 14-164-401 et seq., does not, it is uncertain which act was intended to be referred to by Acts 1985, No. 976.

Acts 1989, No. 626, § 1, provided: "It is hereby found and determined by the General Assembly that:

"(A) Tourism is the second largest industry in the United States with revenues totaling over two hundred billion dollars;

"(B) The various states spend in excess of two hundred million dollars per year to promote and develop tourism and that this amount increases substantially each year;

"(C) As part of the major economic development program being undertaken in Arkansas, it is imperative that the state and its counties and municipalities have every opportunity to participate in the available tourism dollars;

"(D) The hotel and restaurant tax authorized by Act 185 of 1965, as amended, has been levied by many municipalities in Arkansas and in some instances has been pledged to revenue bonds, as authorized by Act No. 977 of 1975, as amended, and the levy of such tax has been essential to the various tourism programs and projects of those municipalities and such projects have and will continue to result in substantial inflow of tourism dollars and the resulting economic benefits to residents of those municipalities and to the state as a whole; and

"(E) As the result of several recent cases in the Supreme Court of Arkansas, questions have arisen concerning the constitutional right of the General Assembly to authorize revenue bond financing and classify revenues for revenue purposes, and the General Assembly desires to reassert its constitutional right to do so as a separate branch of government to the fullest extent of its inherent sovereign power and constitutional power.

"Therefore, it is the purpose of this act is to enable cities of the first class to continue and expand their tourism promotion programs and projects to further enhance the revenues and other benefits derived from tourism and to thereby improve the quality of life of all residents of such cities and the residents of the entire state."

Amendments. The 2007 amendment substituted "restaurants, or similar businesses" for "restaurants, and similar businesses" in (c)(2).

CASE NOTES

ANALYSIS

Constitutionality.
Hospitality Tax.

Constitutionality.

This section is constitutional since it has a rational basis with classifications having a fair and substantial relation to their objective. *Dicks v. Naff*, 255 Ark. 357, 500 S.W.2d 350 (1973), cert. denied, 415 U.S. 958, 94 S. Ct. 1486, 39 L. Ed. 2d 573 (1974).

Where a city proposed the construction of a convention center-hotel complex, to be financed by the issuance of revenue bonds, without an election pursuant to § 14-170-

201, the construction of this project by the city through the issuance of revenue bonds by the city was not violative of Ark. Const., Art. 16, § 1, as amended by Ark. Const. Amend. 13 prior to its repeal by Ark. Const. Amend. 62, § 11, since the promoters were building the hotel at their own expense, substantially contributing to the costs of the convention center, paying an annual rental, and the title to the hotel and convention center were being vested in the city. *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981), questioned, *Purvis v. Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984) (decision under prior law).

Hospitality Tax.

Hospitality tax could not be added on to regular mixed drink tax imposed pursuant to § 3-9-213. *City of Hot Springs v.*

Vapors Theatre Restaurant, 298 Ark. 444, 769 S.W.2d 1 (1989).

Cited: *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986).

26-75-603. Collection of tax.

(a) From the effective date of the levying ordinance, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the advertising and promotion commission of the levying city or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b)(1) The person paying the tax shall report and remit it upon forms provided by the commission and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq. and the Arkansas Tax Procedure Act, § 26-18-101 et seq., so far as practicable shall be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter.

(2) However, the administration and enforcement and all actions shall be by and in the name of the commission through the proper commission officials or agents. The commission shall have the authority to sue and be sued in its name.

(3) The Department of Finance and Administration shall have no authority to enforce or collect the tax levied pursuant to this subchapter.

(c) The levying city is authorized to adopt ordinances consistent with and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et seq., to enable the commission or its agent to enforce the tax through examination of records, notices of proposed and final assessment, and administrative hearings on proposed assessments. The levying city is also authorized to adopt ordinances which enable the commission to:

(1) Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty is equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;

(2) Assess unpaid or unreported tax within three (3) years of the date the tax is due;

(3) Provide for judicial relief from proposed assessments in accordance with subsection (d) of this section; and

(4) Issue certificates of indebtedness in accordance with subdivision (c)(3) of this section.

(d)(1) Within thirty (30) days of the issuance of the notice and demand for payment of a deficiency in tax established by a final determination of the hearing officer, a taxpayer may seek judicial relief from the final determination by either:

(A) Paying under protest the amount of the deficiency, plus penalty and interest determined by the commission to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or

(B)(i) Filing with the commission a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the commission's determination.

(ii) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court costs assessed against the taxpayer.

(iii) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(2) The method provided in this section is the exclusive method for seeking relief from a written decision of the commission establishing a deficiency in tax. No injunction shall issue to stay proceedings for assessment or collection of this tax.

(e)(1) If a taxpayer does not timely and properly pursue the taxpayer's remedies seeking relief from a decision of the commission and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the commission as soon as practicable thereafter shall issue to the circuit clerk of the county where the taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the commission for the amount of the tax established by the commission as due.

(2) The circuit clerk shall enter immediately upon the circuit court judgment docket:

(A) The name of the delinquent taxpayer;

(B) The amount certified as being due;

(C) The name of the tax; and

(D) The date of entry upon the judgment docket.

(3) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the commission's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(4) The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(5) The commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.

(f) The provisions of subsections (d) and (e) of this section shall be effective only when the levying city adopts an ordinance which specifically provides that these provisions shall be utilized by the commission in enforcing the tax.

History. Acts 1965, No. 185, § 3; 1965 § 19-4614; Acts 1993, No. 364, § 2; 1997, (1st Ex. Sess.), No. 30, § 1; A.S.A. 1947, No. 1016, § 1.

26-75-604. Disposition of revenues.

(a) All taxes, interest, penalties, and costs collected pursuant to a tax levied by the city as authorized in this subchapter shall be credited to the city advertising and promotion fund which shall be created by the ordinance levying the tax in the city.

(b) When the electors of any city levy a gross receipts tax on hotels and restaurants, and the ballot dedicates the tax for the development, construction, and maintenance of city parks, the proceeds of the tax shall not be deposited into the city advertising and promotion fund but shall be deposited into a special fund to be used for the development, construction, and maintenance of city parks. The funds shall be disbursed by the mayor upon approval of the city council.

(c) When the electors of any city levy a gross receipts tax as set forth in subsection (b) of this section, and when the electors of that city have pledged some or all of the proceeds thereof to the repayment of bonds as set forth in § 26-75-606(b)(1) and (2) or § 26-75-613(a)(2), the proceeds so pledged shall be deposited into the city advertising and promotion fund and distributed by the city advertising and promotion commission in accordance with the pledge and enactment of the electors.

History. Acts 1965, No. 185, § 4; 1965 § 19-4615; Acts 1989 (3rd Ex. Sess.), No. (1st Ex. Sess.), No. 30, § 2; A.S.A. 1947, 7, § 5; 1993, No. 347, § 1.

CASE NOTES

Cited: *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981).

26-75-605. Advertising and promotion commissions.

(a) Any municipality levying a tax pursuant to this subchapter shall create by ordinance a municipal advertising and promotion commission, to be composed of seven (7) members, as follows:

(1)(A) Four (4) members shall be owners or managers of businesses in the tourism industry, and the owner or manager shall reside in the levying municipality or, if the governing body of the municipality provides for by ordinance, the owner or manager may reside outside of the municipality but within the county where the municipality is located.

(B) At least three (3) of these members shall be owners or managers of hotels, motels, or restaurants and shall serve for staggered terms of four (4) years;

(2) Two (2) members of the commission shall be members of the governing body of the municipality and selected by the governing body and shall serve at the will of the governing body; and

(3) One (1) member shall be from the public at large who shall reside within the levying municipality or in the county of the levying municipality and shall serve for a term of four (4) years.

(b) In the case of a city creating the commission authorized in this section after March 4, 1993, the initial members of the commission shall be selected as follows:

(1) The four (4) tourism industry positions provided for in subdivision (a)(1) of this section shall be filled by appointment made by the governing body of the city for staggered terms so that:

(A) One (1) member will serve for a term of one (1) year;

(B) One (1) for a term of two (2) years;

(C) One (1) for a term of three (3) years; and

(D) One (1) for a term of four (4) years.

(2) The at-large position provided for in subdivision (a)(3) of this section shall be filled by nomination by the chief administrator of the city and approval by the governing body of the city.

(c)(1) In the case of a city in which a city advertising and promotion commission exists on March 4, 1993, the members of the commission shall continue in office for the balance of the terms to which they have been previously appointed.

(2) However, if on that date no commission member has been appointed to hold an at-large position, the mayor shall designate one (1) of the commission members who is also a member of the governing body of the city to fill the at-large position provided for in subdivision (a)(3) of this section for a term of not longer than one (1) year.

(d) Whether resulting from expiration of a regular term or otherwise, a vacancy on the commission in any of the four (4) tourism industry positions provided for in subdivision (a)(1) of this section or in the at-large position provided for in subdivision (a)(3) of this section shall be filled by appointment made by the remaining members of the commission, with the approval of the governing body of the city.

History. Acts 1965, No. 185, § 5; 1969, No. 123, § 2; A.S.A. 1947, § 19-4616; Acts 1993, No. 364, § 3; 1997, No. 913, § 1; 2005, No. 2314, § 2.

Publisher's Notes. The former last part of this section provided that, in the case of those commissions which were in existence on July 1, 1969, the terms of all members would expire on July 1, 1969, and the commission would be constituted as provided in this section, and the hotel, motel, and restaurant members would, at the first meeting of the commission after

July 1, 1969, draw lots for terms so that:

(1) One member would serve for a term of one year; (2) One member would serve for a term of two years; (3) One member would serve for a term of three years; and (4) One member would serve for a term of four years. Thereafter, their successors are to be appointed for terms of four years.

Amendments. The 2005 amendment substituted "municipality" for "city" throughout (a); and inserted "or in the county of the levying municipality" in (a)(3).

26-75-606. Use of funds collected.

(a)(1)(A) In the manner as shall be determined by the municipal advertising and promotion commission, all funds credited to the city advertising and promotion fund pursuant to this subchapter shall be used for the:

- (i) Advertising and promoting of the city and its environs;
- (ii) Construction, reconstruction, extension, equipment, improvement, maintenance, repair, and operation of a convention center;
- (iii) Operation of tourist promotion facilities in the city or the county where the city is located if the city owns an interest in the convention center or facility, and facilities necessary for, supporting, or otherwise pertaining to, a convention center; or
- (iv) Payment of the principal of, interest on, and fees and expenses in connection with bonds as provided in this subchapter.

(B) The commission may engage such personnel and agencies and incur such administrative costs as it deems necessary to conduct its business.

(2)(A) The commission is the body that determines the use of the city advertising and promotion fund.

(B) Pursuant to this section, if the commission determines that funding of the arts is necessary for or supporting of its city's advertising and promotion endeavors, the commission may use its funds derived from the hotel and restaurant tax.

(3)(A) The commission may purchase, own, operate, sell, lease, contract, or otherwise deal in or dispose of real property, buildings, improvements, or facilities of any nature in accordance with this subchapter.

(B) If the commission is dissolved, the city shall assume the authority under subdivision (a)(3)(A) of this section.

(b)(1)(A) Any city of the first class that may levy and does levy a tax pursuant to this subchapter may use or pledge all or any part of the revenues derived from the tax for the purposes prescribed in this subchapter or for the operation of tourist-oriented facilities, including, but not limited to, theme parks and other family entertainment facilities or for the retirement of bonds issued for the establishment and operation of other tourist-oriented facilities, including, but not limited to, theme parks and other family entertainment facilities.

(B) These revenues shall be used or pledged for the purposes authorized in this subsection only upon approval of the commission created pursuant to this subchapter.

(2) Funds credited to the city advertising and promotion fund pursuant to this subchapter may be used, spent, or pledged by the commission, in addition to all other purposes prescribed in this subchapter, on and for the construction, reconstruction, repair, maintenance, improvement, equipping, and operation of public recreation facilities in the city or the county where the city is located if the city owns an interest in the center or facility, including, but not limited to,

facilities constituting city parks and also for the payment of the principal of, interest on, and fees and expenses in connection with bonds as provided in this subchapter in the manner as shall be determined by the commission for the purpose of such payment.

(c)(1) All local taxes levied as authorized in § 26-75-602(a) shall be credited to the city advertising and promotion fund and shall be used for the purposes described in subsections (a) and (b) of this section.

(2) The taxes shall not be used:

(A) For general capital improvements within the city or county;

(B) For the costs associated with the general operation of the city or county; or

(C) For general subsidy of any civic group or the chamber of commerce.

(3) However, the commission may contract with such groups to provide to the commission actual services that are connected with tourism events or conventions.

(4) The authorization and limitations contained in this subsection shall be reasonably construed so as to provide funds for promoting and encouraging tourism and conventions while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the city.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; 1977, No. 178, § 2; 1981, No. 20, § 2; 1983, No. 821, § 1; A.S.A. 1947, §§ 19-4617, 19-4617.1; Acts 1989, No. 626, § 3; 1989, No. 650, § 1; 1991, No. 726, § 2; 1991, No. 1178, § 1; 1993, No. 347, § 2; 1993, No. 364, §§ 4-6; 2005, No. 2241, § 1; 2007, No. 390, § 1.

Publisher's Notes. See Publisher's notes to § 26-75-602.

As to legislative findings, see Publisher's Notes, § 26-75-602.

Acts 1991, No. 1178, § 2, provided: "It is

the intent of this act to affirm the authority of city advertising and promotion commissions over the use of the city advertising and promotion commission funds for administrative and promotional purposes."

Amendments. The 2005 amendment inserted the subdivision designations in (a)(1); inserted "or the county where the city is located if the city owns an interest in the center or facility" in (a)(1)(A) and (b)(2); and added "or county" in (c)(2)(A) and (B).

The 2007 amendment added (a)(3).

CASE NOTES

Authority of Commission.

An implied power in the City of Hot Springs Advertising and Promotion Commission is not read into this subchapter for the commission to sue to collect com-

missions on the sale of food and beverages. *City of Hot Springs Adv. & Promotion Comm'n v. Cole*, 317 Ark. 269, 878 S.W.2d 371 (1994).

26-75-607. Authority to issue bonds.

Cities of the first class levying the tax and creating the commission as permitted in this subchapter are authorized to:

(1) Acquire sites for, construct, reconstruct, extend, equip, improve, maintain, and operate convention centers and facilities necessary for, supporting, or otherwise pertaining to, convention centers which are

collectively referred to in this section as "convention center projects" in such cities; and

(2) Issue bonds to provide funds for accomplishing convention center projects and to pledge all or any part of the revenues from the tax levied by the city pursuant to this subchapter to pay the principal of, interest on, and fees and expenses in connection with the bonds.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; A.S.A. 1947, § 19-4617.

Publisher's Notes. See Publisher's notes to § 26-75-602.

26-75-608. Issuance of bonds.

(a) Bonds issued by a municipality pursuant to this subchapter shall be authorized by ordinance of the governing body of the city.

(b) The bonds may:

- (1) Be in registered or other form;
- (2) Be exchangeable for bonds of another denomination;
- (3) Be in such form and denominations;
- (4) Be made payable at such places within or without the state;
- (5) Be issued in one (1) or more series;
- (6) Bear such date or dates;
- (7) Mature at such time or times, not exceeding forty (40) years from their respective dates;
- (8) Bear interest at such rate or rates;
- (9) Be payable in such medium of payment;
- (10) Be subject to such terms of redemption; and
- (11) Contain such other terms, covenants, and conditions, as the ordinance authorizing their issuance may provide, including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance and investment of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the municipality and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same convention center project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping convention center projects already in existence, whether or not originally financed by bonds issued under this subchapter and with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the convention center project facilities involved may be controlled by the ordinance authorizing the issuance of bonds under this

subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

History. Acts 1965, No. 185, § 6; 1969, § 18; 1981, No. 425, § 18; A.S.A. 1947, No. 123, § 3; 1970 (1st Ex. Sess.), No. 58, § 19-4617; Acts 1993, No. 364, § 7. § 1; 1971, No. 188, § 1; 1975, No. 225,

26-75-609. Execution of bonds.

The bonds shall be executed in the manner provided by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq., as that act may be amended.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; A.S.A. 1947, § 19-4617; Acts 1993, No. 364, § 8.

26-75-610. Nature of bonds generally.

(a)(1) The bonds shall not be general obligations of the city involved, but shall be special obligations secured and payable as provided in this subchapter.

(2) In no event shall the bonds constitute an indebtedness of the city within the meaning of any constitutional or statutory limitation.

(b) The principal of and interest on all bonds issued under the authority of this subchapter shall be secured by a pledge of and shall be payable from all or any part of the revenues derived from the tax levied by the city pursuant to this subchapter or from all or any part of the revenues derived from the operation of the convention center project involved.

(c) The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the city and the holders and registered owners of all bonds issued by the city under the authority of this subchapter, which contract and all covenants, agreements, and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of the contract.

(d) The contract and all rights of the holders and registered owners of the bonds and the obligations of the city may be enforced by mandamus or any other appropriate proceeding at law or in equity.

(e) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; A.S.A. 1947, § 19-4617; Acts 1993, No. 364, § 9.

CASE NOTES

Constitutionality.

The issuance of city revenue bonds to pay the costs of the city's portion of a

proposed convention center-hotel complex are special obligations of the city, secured and payable; thus Ark. Const. Amend. 20,

which does not prohibit the pledging of public revenues if the state is not obligated, is not violated, since the bondholders must look solely to special funds not available for general purposes for pay-

ment. *Purvis v. Hubbell*, 273 Ark. 330, 620 S.W.2d 282 (1981), questioned, *Purvis v. Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984).

26-75-611. Bonds as securities.

(a) Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(b) These bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of this state for any purpose for which the deposit of bonds or obligations of the state is authorized by law.

(c) Any municipality or county, or any board, commission, or other authority established by any municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly in its discretion may invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter.

(d) Bonds issued under the authority of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; A.S.A. 1947, § 19-4617.

26-75-612. Tax exemption for bonds.

(a) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

History. Acts 1965, No. 185, § 6; 1969, No. 123, § 3; 1971, No. 188, § 1; A.S.A. 1947, § 19-4617.

26-75-613. Pledge of revenues.

(a)(1) Any city of the first class levying the tax and creating the commission as permitted in this subchapter is authorized to pledge all or any part of the revenues from the tax levied pursuant to this subchapter to the payment of principal of and interest on bonds issued by the city under the authority of any other law in effect, for the purpose of providing all, or part of, the funds for the acquisition, construction, reconstruction, extension, equipment, improvement, maintenance, or operation of any facility including, without limitation, auditoriums and

parking facilities, which will be operated as a part of, or operated or utilized in connection with, or in support of, a convention center project.

(2) Any municipality that has levied a tax, known as the hotel and restaurant tax, as authorized in § 26-75-602(a), may pledge all or any part of the revenues derived from the hotel and restaurant tax to the payment of principal and interest on bonds issued by the municipality under the authority of §§ 14-170-201 — 14-170-214 or any subsequent law and called tourism revenue bonds, or to the extent necessary to match grant funds in an amount at least equal to the proceeds of the bonds to the payment of principal and interest on bonds issued by the municipality under the authority of §§ 14-186-101 and 14-186-301 — 14-186-312, or any subsequent law.

(b)(1) The pledge of revenues derived from the hotel and restaurant tax shall be by the ordinance of the municipality authorizing the bonds, called the authorizing ordinance, and in the case of tourism revenue bonds shall be subject to the approval of the city advertising and promotion commission.

(2) The authorizing ordinance shall specify the nature and extent of the pledge of revenues derived from the hotel and restaurant tax and may contain such terms, covenants, and conditions pertaining to the collection, custody, and disposition of revenues derived from the hotel and restaurant tax as the governing body of the municipality deems desirable including, without limitation, a covenant that the hotel and restaurant tax will be collected so long as the bonds are outstanding.

(3)(A) The provisions of the authorizing ordinance relating to the hotel and restaurant tax and the revenues derived therefrom together with this subchapter shall constitute a contract by and between the municipality and the holders and registered owners of the bonds authorized thereby, which contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract.

(B) The contract and all rights of the holders and registered owners of the bonds and all obligations of the municipality may be enforced by mandamus or any other appropriate proceeding at law or in equity.

History. Acts 1965, No. 185, § 6; 1971, No. 188, § 1; 1975, No. 977, §§ 1, 2; 1979, No. 727, §§ 1, 2; A.S.A. 1947, §§ 19-4617, 19-4618, 19-4619; Acts 1993, No. 364, § 10.

Publisher's Notes. See Publisher's notes to § 26-75-602.

CASE NOTES

Constitutionality.

The issuance of city revenue bonds to pay the costs of the city's portion of a proposed convention center-hotel complex are, under § 26-75-610 special obligations of the city, secured and payable; thus Ark.

Const., Amend. 20, which does not prohibit the pledging of public revenues if the state is not obligated, is not violated, since the bondholders must look solely to special funds not available for general purposes for payment. *Purvis v. Hubbell*, 273

Ark. 330, 620 S.W.2d 282 (1981), questioned, *Purvis v. Little Rock*, 282 Ark. 102, 667 S.W.2d 936 (1984).

26-75-614. Trust indenture.

(a) The ordinance authorizing the bonds may provide for the execution by the chief executive officer of the municipality of a trust indenture which defines the rights of the owners of the bonds and provides for the appointment of a trustee for the owners of the bonds.

(b) The trust indenture may provide for the priority between and among successive issues and may contain any of the provisions set forth in § 26-75-608 and any other terms, covenants, and conditions that are deemed desirable.

History. Acts 1993, No. 364, § 11.

26-75-615. Sale of bonds.

The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the governing body of the municipality may determine.

History. Acts 1993, No. 364, § 11.

26-75-616. No personal liability.

No official, officer, employee, or member of the governing body of the municipality or the advertising and promotion commission shall be personally liable on any bonds issued under the provisions of this subchapter or for any damages sustained by any person in connection with any contracts entered into to carry out the purposes and intent of this subchapter unless that person has acted with a corrupt intent.

History. Acts 1993, No. 364, § 11.

26-75-617. Refunding bonds.

(a) Bonds may be issued under this subchapter to refund any outstanding bonds issued pursuant to this subchapter or to refund any outstanding bonds issued pursuant to any other law for the purpose of financing convention center projects.

(b)(1) The refunding bonds may be either sold for cash or delivered in exchange for the outstanding obligations.

(2) If sold for cash, the proceeds may be either applied to the payment of the obligations refunded or deposited into irrevocable trust for the retirement thereof either at maturity or on an authorized redemption date.

(c) Refunding bonds shall in all respects be authorized, issued, and secured in the manner provided in this subchapter.

(d) The ordinance under which the refunding bonds are issued may provide that any refunding bonds shall have the same priority of lien on

all project revenues as originally pledged for payment of the obligation refunded thereby.

History. Acts 1993, No. 364, § 11.

26-75-618. Title.

This subchapter may be referred to as the “Advertising and Promotion Commission Act”.

History. Acts 1993, No. 364, § 11.

SUBCHAPTER 7 — GROSS RECEIPTS TAX ON HOTELS, ETC., IN CERTAIN CITIES

SECTION.

- 26-75-701. Tax authorized.
- 26-75-702. Election required.
- 26-75-703. City advertising and promotion commission.

SECTION.

- 26-75-704. Collection and administration.
- 26-75-705. Use of funds.

Effective Dates. Acts 1985, No. 478, § 7: Mar. 28, 1985. Emergency clause provided: “It is found and determined by the General Assembly that cities of the first class of this State, as defined in this Act, are in need of additional monies for the advertising and promotion of said cities, and to enable said cities to establish facilities to attract tourists, and that the immediate passage of this Act is necessary in order to enable cities to provide for a levy of a two percent (2%) tax upon the gross receipts or gross proceeds derived from the sale of tangible personal property sold by gift shops in such cities in addition to taxes now authorized to be levied in Act 185 of 1965, as amended, and that the immediate passage of this Act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 696, § 7: Mar. 28, 1985. Emergency clause provided: “It is found and determined by the General Assembly that cities of the first class of this State, as defined in this Act, are in need of additional monies for the advertising and promotion of said cities, and to enable said cities to establish facilities to attract tour-

ists, and that the immediate passage of this Act is necessary in order to enable cities to provide for a levy of a two percent (2%) tax upon the gross receipts or gross proceeds derived from the sale of tangible personal property sold by gift shops in such cities in addition to taxes now authorized to be levied in Act 185 of 1965, as amended, and that the immediate passage of this Act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 182, § 32: Jan. 1, 2008.

Acts 2007, No. 473, § 4: Mar. 23, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that tourist season is rapidly approaching and cities and towns depend on the local tax revenue generated through local hotels, motels, restaurants, or similar establishments; that the law as currently written does not allow the local government the flexibility to collect the tax in a manner that reflects local business establishments; and that this act is necessary because it is imperative to the successful operation of local government to capture the tax revenue from the approaching tourist season.

Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-75-701. Tax authorized.

(a) Any city of the first class having a population of less than five thousand (5,000) inhabitants, a portion of which has been designated as a historic district and is included on the National Register of Historic Places, by ordinance of its governing body, may levy a tax not to exceed two percent (2%) upon the gross receipts or gross proceeds from any one (1) or more of the following:

(1) The renting, leasing, or otherwise furnishing of lodging for profit in the city;

(2) Restaurants, cafes, cafeterias, or other business establishments, as defined in the levying ordinance, engaged in the business of selling prepared food for consumption on the premises in the city;

(3) Sales by retail businesses, a majority of whose gross receipts or gross proceeds are derived from the sale of items available for sale to tourists, as defined in the levying ordinance; and

(4) Admission price to tourist attractions, as defined in § 26-63-401.

(b)(1) Any tourist attraction with total gross receipts of seven hundred fifty thousand dollars (\$750,000) or more that has a portion of the real property on which the attraction is located that abuts and adjoins a city may petition the adjoining city to be included without annexation in the levy and collection of the tax set forth in subsection (a) of this section.

(2) Upon receipt of the petition, the governing body may pass an ordinance effective on or after January 1, 2000, levying the tax set forth in this section on the petitioning area at the same rate as that of the adjoining city.

(3) The adjoining city shall have no authority over the petitioning attraction except as provided in this section.

(4) As used in this section, "tourist attraction" means:

(A) A cultural or historical site;

(B) A recreational or entertainment facility;

(C) An area of natural phenomena or scenic beauty;

(D) A theme park;

(E) An amusement or entertainment park;

(F) An indoor or outdoor play or music show;

(G) A botanical garden; or

(H) A cultural or educational center.

(c)(1) As used in this subchapter, "lodging" means furnishing for profit temporary accommodations based on a rental, lease, or other agreement.

(2) “Lodging” includes the furnishing for profit of:

(A) A hotel room, motel room, or other similar room that provides accommodations for a traveler;

(B) A condominium rental agreement; and

(C) A meeting or party room facility.

(3) “Lodging” does not include the rental or lease of an accommodation for thirty (30) consecutive days or more.

History. Acts 1985, No. 478, § 1; 1985, No. 696, § 1; A.S.A. 1947, § 19-4622; Acts 1999, No. 1313, § 1; 2001, No. 1657, § 1; 2007, No. 182, § 31; 2007, No. 464, §§ 1, 2; 2007, No. 473, § 3.

A.C.R.C. Notes. Acts 2007, No. 464, § 4, provided: “(a) A city of the first class that has a population of fewer than five thousand (5,000) inhabitants that levies an advertising and promotions tax under § 26-75-701 et seq. before the effective date of this act shall amend the levying ordinance to comply with the provisions of this act.” (b) On the first day of the second calendar month following the effective date of this act, an advertising and promotion commission created under § 26-75-701 et seq. and created before the effective date of this act is abolished.”

Acts 2007, No. 464, § 5, provided: “A city of the first class that has a population of fewer than five thousand (5,000) inhabitants that levies an advertising and promotions tax under § 26-75-701 et seq. before the effective date of this act shall amend the levying ordinance to comply with the provisions of this act.”

Publisher’s Notes. Acts 1985, No. 478,

§ 6, and No. 696, § 6, provided, in part, that it is the intent of this act to authorize a procedure by which cities of the first class may levy gross receipts taxes upon receipts of gift shops in addition to cafes, restaurants, and cafeterias, and hotels and motels for the benefit of their advertising and promotion fund, and is not intended to repeal any of the existing laws of this state pertaining to the levy of gross receipts taxes for the benefit of city advertising and promotion funds.

Amendments. The 2007 amendment by No. 182 substituted “§ 26-63-401” for “§ 26-52-1001” in (a)(4).

The 2007 amendment by No. 464 substituted “lodging” for “hotel or motel accommodations” in (a)(1); in (a)(3), substituted “retail businesses” for “gift shops” and deleted “commonly referred to as gifts or souvenirs” following “items”; and added (c).

The 2007 amendment by No. 473 added “any one (1) or more of the following” in the introductory language of (a); and substituted “cafeterias, or other business” for “cafeterias, and other business” in (a)(2).

Effective Dates. Acts 2007, No. 182, § 32: Jan. 1, 2008.

26-75-702. Election required.

The governing body of a city levying the tax authorized in this subchapter shall submit the question of levying such a tax to the electors of the city, if petitions signed by not less than five hundred (500) qualified electors of the city requesting an election are filed with the governing body of the city within thirty (30) days after the adoption of the ordinance levying the tax.

History. Acts 1985, No. 478, § 2; 1985, No. 696, § 2; A.S.A. 1947, § 19-4623.

26-75-703. City advertising and promotion commission.

(a) Any city levying a tax pursuant to this subchapter in the ordinance levying the tax shall create a city advertising and promotion commission to be composed of seven (7) members as follows:

(1) Four (4) members shall be hotel, motel, or restaurant owners or managers of businesses that collect the tax authorized under this subchapter and one (1) member shall be a gift shop owner or manager, each of whom shall be appointed by the mayor with the approval of the governing body of the city;

(2) One (1) member who is appointed at large by the mayor with the approval of the governing body of the city; and

(3) The remaining two (2) members of the commission shall be the mayor and one (1) member of the governing body of the city selected by the governing body of the city or two (2) members of the governing body of the city as provided in the levying ordinance.

(b)(1) Each member appointed to the advertising and promotion commission shall serve a term of four (4) years and until his or her successor is selected as provided under this section.

(2) The terms shall be staggered so that no more than two (2) members' terms expire each year.

(c)(1) If a vacancy occurs in an appointed position for any reason, the mayor shall appoint a person within sixty (60) days to fill the vacancy.

(2)(A) If the mayor fails to appoint a member to fill a vacancy within sixty (60) days, then the chair of the commission shall appoint a person to fill the vacancy within thirty (30) days, and the appointment shall be approved by a majority of the commissioners.

(B) The governing body of the city shall approve the appointment before a new member appointed under subdivision (c)(2)(A) of this section may act in his or her official capacity.

(3) A new member under this subsection shall serve for the remainder of the unexpired term.

(d) The members shall determine by majority vote who shall serve as chair.

History. Acts 1985, No. 478, § 3; 1985, No. 696, § 3; A.S.A. 1947, § 19-4624; Acts 2007, No. 464, § 3.

A.C.R.C. Notes. Acts 2007, No. 464, § 4, provided: "(a) A city of the first class that has a population of fewer than five thousand (5,000) inhabitants that levies an advertising and promotions tax under § 26-75-701 et seq. before the effective date of this act shall amend the levying ordinance to comply with the provisions of this act.

"(b) On the first day of the second calendar month following the effective date of this act, an advertising and promotion commission created under § 26-75-701 et seq. and created before the effective date of this act is abolished."

Acts 2007, No. 464, § 5, provided: "A city of the first class that has a population of fewer than five thousand (5,000) inhabitants that levies an advertising and pro-

motions tax under § 26-75-701 et seq. before the effective date of this act shall amend the levying ordinance to comply with the provisions of this act."

Publisher's Notes. The former last two sentences of this section provided that, in the case of those commissions which are in existence on April 1, 1985, the terms of all members shall continue as presently provided for by law, that the first appointed position which becomes vacant due to the expiration of its term after April 1, 1985, shall be filled by an owner or manager of a gift shop appointed by the mayor, that the term of that position shall be 4 years, and that position shall continue to be filled by an owner or manager of a gift shop so long as the ordinance authorized by this subchapter shall be in effect.

Amendments. The 2007 amendment, in (a)(1), substituted "four (4) members"

for "three (3) members," inserted "of businesses that collect the tax authorized under this subchapter," and deleted "for staggered terms of four (4) years" from the

end; added (a)(2) and redesignated the remaining subdivision accordingly; rewrote (a)(3) and (b); and added (c) and (d).

26-75-704. Collection and administration.

(a) From the effective date of the levying ordinance, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the city which has passed the levying ordinance in the same manner and at the same time as the gross receipts tax levied by §§ 26-75-602 — 26-75-613.

(b) The person paying the tax shall report and remit the tax upon forms provided by the city, and as directed by the city, and the rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., so far as practicable shall be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter. However, the administration and enforcement and all actions shall be by and in the name of the city through the proper city officials.

History. Acts 1985, No. 478, § 4; 1985, No. 696, § 4; A.S.A. 1947, § 19-4625.

26-75-705. Use of funds.

All funds derived from the levy of the tax authorized and imposed under the provisions of this subchapter shall be credited to the city advertising and promotion fund and shall be used in accordance with the provisions of §§ 26-75-602 — 26-75-613, it being the intent of this subchapter that the provisions of §§ 26-75-602 — 26-75-613 shall be applicable to the purposes for which the taxes levied under the provisions of this subchapter may be used.

History. Acts 1985, No. 478, § 5; 1985, No. 696, § 5; A.S.A. 1947, § 19-4626.

SUBCHAPTER 8 — AIRPORT PREMISES

SECTION.

26-75-801. Sales tax on sales made on or near airport premises.

26-75-801. Sales tax on sales made on or near airport premises.

(a) Every city of the first class, city of the second class, and incorporated town by its ordinance may levy a tax of not more than twenty-five dollars (\$25.00) per transaction on all sales of goods and services by businesses located on the premises of a municipal airport or a regional airport located within the city or by businesses located on property

adjacent to the airport when such businesses provide goods and services for airplanes in excess of two thousand five hundred dollars (\$2,500).

(b) The tax shall be collected in the manner prescribed by ordinance and shall be used for the maintenance, operation, or construction of the airport facility.

History. Acts 1989, No. 277, § 1.

CHAPTER 76
COUNTY PRIVILEGE AND LICENSE TAXES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. PRIVILEGES TAXED GENERALLY.
- 3. EXEMPTIONS [REPEALED.]

RESEARCH REFERENCES

A.L.R. Exemption of agricultural activities or occupations from business or occupation license or tax. 38 A.L.R.4th 1074.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-76-101. Peddler or hawker defined.
- 26-76-102. Blank licenses issued to county collectors.
- 26-76-103. Licenses to be signed and filled in.
- 26-76-104. County collector to account for licenses.

SECTION.

- 26-76-105. Report of taxes collected and licenses issued.
- 26-76-106. Demand of tax for exhibition or business.
- 26-76-107. Licenses not transferable.
- 26-76-108. Expiration times of license.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1885, No. 54, § 2: effective on passage.

Acts 1893, No. 5, § 3: effective on passage.

26-76-101. Peddler or hawker defined.

Whoever shall engage in the business of selling goods, wares, or merchandise of any description other than articles grown, produced, or manufactured by the seller himself or herself or by those in his or her employ, and sold by going from house to house or place to place, either by land or water, to sell them is declared to be a “peddler” or “hawker”.

History. Acts 1885, No. 54, § 1, p. 68; C. & M. Dig. § 9793; Pope's Dig., § 13359; A.S.A. 1947, § 84-1528.

CASE NOTES

ANALYSIS

In General.
Construction.
Applicability.
Peddlers or Hawkers.

In General.

This section was not repealed by Acts 1901, No. 136, which was declared unconstitutional in *Ex parte Deeds*, 75 Ark. 542, 87 S.W. 1030 (1905), questioned, *State v. Gray*, 192 Ark. 1045, 96 S.W.2d 447 (1936); *Ex parte Merritt*, 80 Ark. 203, 96 S.W. 983 (1906).

Construction.

Words "or by those in his employ" refer to production, manufacture, and sale. *El Dorado Baking Co. v. Hope*, 193 Ark. 949, 103 S.W.2d 933 (1937).

Definition of this section does not require both a house to house visit and a place to place visit, but either a place to place visit or a house to house visit is sufficient. *Gill v. State*, 195 Ark. 846, 114 S.W.2d 837 (1938).

Applicability.

The definition of hawkers and peddlers is applicable to both state tax and county taxes. *Garner v. State*, 156 Ark. 24, 245 S.W. 184 (1922).

The language of this section is sufficiently broad to include both natural persons and corporations. *El Dorado Baking Co. v. Hope*, 193 Ark. 949, 103 S.W.2d 933 (1937).

Peddlers or Hawkers.

A person selling religious tracts or books is a peddler or hawker within the

meaning of this section. *Cook v. Harrison*, 180 Ark. 546, 21 S.W.2d 966 (1929), questioned, *Berry v. City of Hope*, 205 Ark. 1105, 172 S.W.2d 922 (1943).

A salesman, taking orders for cigars from the retail trade and at the time delivering a supply if the customer was out, is a peddler. *Rose v. City of Pine Bluff*, 186 Ark. 157, 52 S.W.2d 979 (1932).

Agents of baking company located in one city who sold and delivered products by truck to stores, hotels, and cafes in another town were not peddlers within this section. *El Dorado Baking Co. v. Hope*, 193 Ark. 949, 103 S.W.2d 933 (1937).

A peddler is one without fixed place of dealing, who carries with him the wares he offers for sale, sells them at the time he offers them, delivers them then and there, and sells to consumers and not exclusively to dealers in the articles sold by him. *Gill v. State*, 195 Ark. 846, 114 S.W.2d 837 (1938).

Person sending trucks upon the highways in charge of drivers employed by him to sell goods, wares, and merchandise, is engaging in the business of hawking and peddling just as if he were driving the trucks personally and is liable for the tax imposed on peddlers. *Gill v. State*, 195 Ark. 846, 114 S.W.2d 837 (1938).

Owner of truck is within this section though having a fixed place of business from which truck is loaded in the morning and to which it is returned at night. *Gill v. State*, 195 Ark. 846, 114 S.W.2d 837 (1938).

26-76-102. Blank licenses issued to county collectors.

It shall be the duty of the clerk of the county court to issue blank licenses for the privileges and purposes mentioned in this act and deliver them to the county collector and charge him or her with the amount thereof, specifying in each case the number and amount of each kind of license.

History. Acts 1883, No. 114, § 156, p. 199; C. & M. Dig., § 9844; Pope's Dig., § 13588; A.S.A. 1947, § 84-1503.

Meaning of "this act". Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 [repealed], 16-92-114, 16-92-115 [repealed], 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101 — 26-28-108, 26-28-110,

26-28-111, 26-34-102, 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1003 [repealed], 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 36-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204, 26-39-205 [repealed], 26-39-206 — 26-39-221, 26-39-302 — 26-39-305 [repealed], 26-39-403, 26-39-406, 26-39-501, 26-39-502, 26-39-503 — 26-39-509 [repealed], 26-76-102 — 26-76-108, 26-76-201 [repealed], and 26-76-202.

26-76-103. Licenses to be signed and filled in.

(a) Each blank license shall be signed by the clerk and authenticated by the seal of the county court. The county collector in granting every license shall fill in and countersign one (1) of the blank licenses delivered to him or her by the clerk of the county court. No license, unless thus signed, authenticated, and countersigned, shall authorize or avail any person to act under it.

(b) The county collector shall be entitled to a five percent (5%) commission on each license for the amount collected, to be paid by the person receiving the license.

History. Acts 1883, No. 114, § 156, p. 199; C. & M. Dig., § 9846; Pope's Dig., § 13590; A.S.A. 1947, § 84-1505.

26-76-104. County collector to account for licenses.

(a) The account of the clerk of the county court against the county collector for the licenses provided for in this act shall be so kept as to show by denominations and numbers exactly what licenses issued to the county collector by the clerk are in the county collector's hands at any time. Upon the final settlement of each county collector, the clerk of the county court shall require the return by the county collector of all licenses issued to the county collector and not issued by the county collector.

(b) The county collector shall receive credit for all of such licenses as he or she shall return to the clerk without having issued them.

(c) For all licenses the county collector shall not thus account for, the county collector shall be held liable upon his or her official bond as county collector for so much money as the amount of the licenses, and the clerk shall certify the settlement to the Auditor of State.

History. Acts 1883, No. 114, § 160, p. 199; C. & M. Dig., § 9852; Pope's Dig., § 13596; A.S.A. 1947, § 84-1509.

Meaning of "this act". See note to § 26-76-102.

26-76-105. Report of taxes collected and licenses issued.

(a) The privilege taxes paid as provided in this act to the county collector shall be reported by him or her quarterly and paid into the county treasury within twenty (20) days after the granting of the license for which the privilege tax is paid.

(b) Each county collector shall at the end of each quarter make to the clerk of the county a detailed report of the licenses issued by the county collector during the quarter, showing:

- (1) The number and date of the license;
- (2) The name of the license;
- (3) The privilege for which it was issued; and
- (4) The amount collected for it.

(c) If any county collector shall fail to make the report, the county collector shall be notified by the clerk of the county court and required to make the report, and for failure to perform any of the duties required of the county collector under this act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000).

History. Acts 1883, No. 114, § 157, p. 199; 1893, No. 5, § 1, p. 4; C. & M. Dig., § 9847; Pope's Dig., § 13591; A.S.A. 1947, § 84-1506.

Meaning of "this act". See note to § 26-76-102.

CASE NOTES**Liability for Moneys.**

Collector of revenue was liable, and his sureties with him, for all moneys collected by him on liquor licenses issued up to the

end of his term of office, although licenses did not expire until end of year. Crawford v. Carson, 35 Ark. 565 (1880) (decision under prior law).

26-76-106. Demand of tax for exhibition or business.

(a)(1) It shall be the duty of the sheriff or any constable of the county to ask, demand, and receive from persons who may attempt in any county to make and exhibit any of the objects or performances, upon which a specified tax is levied, the tax for an exhibition.

(2) Upon demand, if a person shall neglect or refuse to pay the tax, he or she shall be deemed a disturber of the public peace, and it shall be the duty of the officers making the demand to command him or her to immediately desist, and to compel obedience to such command, such officer may call to his or her aid any number of citizens.

(b)(1) It shall be the duty of the county collector to call upon any person he or she may know, or have reason to believe, to be pursuing within his or her county any business upon which, by the provisions of this act a specific tax is levied, without having a license therefor, as required by law, to produce a license.

(2) If the person fails or refuses to produce to the county collector a license, then it shall be the duty of the county collector to immediately give information against the person to some justice of the peace of the

county. However, if the circuit court is in session, then it shall be the duty of the county collector to give the information to the grand jury of the county.

History. Acts 1883, No. 114, § 158, p. 199; C. & M. Dig., §§ 9849, 9850; Pope's Dig., §§ 13593, 13594; A.S.A. 1947, § 84-1507.

Meaning of "this act". See note to § 26-76-102.

26-76-107. Licenses not transferable.

The licenses provided for in this act shall be a personal privilege, enjoyable only by the person to whom it is issued, and shall not be transferable.

History. Acts 1883, No. 114, § 159, p. 199; C. & M. Dig., § 9851; Pope's Dig., § 13595; A.S.A. 1947, § 84-1508.

Meaning of "this act". See note to § 26-76-102.

26-76-108. Expiration times of license.

- (a) In cases when by the provisions of this act the privilege is to be for twelve (12) months or less, the license shall expire on April 30 next after the date of the delivery thereof by the county collector to the party applying for it.
- (b) In a case when the privilege is to be for six (6) months or less, the license shall expire on June 30 and December 31, respectively, next after the date thereof.

History. Acts 1883, No. 114, § 156, p. 199; C. & M. Dig., § 9845; Pope's Dig., § 13589; A.S.A. 1947, § 84-1504.

Meaning of "this act". See note to § 26-76-102.

SUBCHAPTER 2 — PRIVILEGES TAXED GENERALLY

SECTION.	SECTION.
26-76-201. [Repealed.]	26-76-203. [Repealed.]
26-76-202. Public exhibitions and auctioneers.	26-76-204. Foreign traders and peddlers.

Effective Dates. Acts 1883, No. 114, § 226: effective on passage.
Acts 1891, No. 72, § 2: effective on passage.
Acts 1895, No. 102, § 2: effective on passage.

Acts 1901, No. 165, § 2: effective on passage.
Acts 1905, No. 181, § 4: effective on passage.

26-76-201. [Repealed.]

Publisher's Notes. This section, concerning legal proceedings, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was derived from the follow-

ing sources: Acts 1883, No. 114, § 5, p. 199; 1889, No. 108, § 1, p. 155; C. & M. Dig., § 9831; Pope's Dig., § 13572; A.S.A. 1947, § 84-1501.

26-76-202. Public exhibitions and auctioneers.

There shall be collected as a county tax:

(1)(A) An amount to be fixed by the county court of each county for each and every public exhibition given by any person in any county in this state, any part of the proceeds of which is for his or her personal profit, and the licenses may be fixed for each exhibition, or monthly, quarterly, or annually, in the discretion of the county court.

(B)(i) This subdivision (1) shall not apply to theaters and opera houses in cities of the first class, cities of the second class, and incorporated towns where no liquor is sold by the management or on the premises.

(ii) In cities of twenty thousand (20,000) inhabitants and over, the license for theaters and opera houses where no liquor is sold on the premises shall be one hundred dollars (\$100) for county purposes.

(iii) The exceptions in this subdivision (1) shall not be construed to apply to what is generally known as theaters comique or variety theaters;

(2) The sum of ten dollars (\$10.00) upon each and every auctioneer who follows the business for profit, for the privilege of selling any lands, goods, wares, and merchandise at public outcry in any county in this state, for the term of six (6) months or less.

History. Acts 1883, No. 114, § 6, p. 199; 1891, No. 72, § 1, p. 129; 1895, No. 102, § 1, p. 148; 1901, No. 165, § 1, p. 318; C.

& M. Dig., § 9833; Pope's Dig., § 13574; A.S.A. 1947, § 84-1502.

CASE NOTES**Exhibitions.**

Provision of subdivision (1) of this section authorizing the levying of a tax on exhibitions was not repealed by Acts 1929, No. 63, § 4, which provided for a license of \$25 per day for such shows, the effect of the latter act being merely to restrict the

county court in fixing the amount of license while it was in effect, and after repeal of the latter act, the county court was again unrestricted in its authority to fix the tax. *Morgan v. Johnson County*, 187 Ark. 582, 61 S.W.2d 68 (1933).

26-76-203. [Repealed.]

Publisher's Notes. This section, concerning fortune-telling, was repealed by Acts 1993, No. 344, § 2. The section was derived from the following sources: Acts

1929, No. 236, §§ 1-5; Pope's Dig., §§ 13360 - 13363; Acts 1945, No. 48, § 1; A.S.A. 1947, §§ 84-1520 — 84-1524.

26-76-204. Foreign traders and peddlers.

(a)(1) It shall be unlawful for any foreign person or corporation to swap, trade, or traffic in horses or mules in this state, or to peddle organs, stove ranges, or pianos, or vehicles without first paying a license of one hundred dollars (\$100) in each county in which they do business.

(2) This section shall not apply to any horse or mule trader, except those who travel through the country carrying their camping outfits and who camp on the public domain.

(b) Anyone violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300). Each day's violation shall constitute a separate offense.

(c)(1) It shall be the duty of the sheriff of the county or the constable of any township to collect the license for his or her county. When collected, it shall be turned over to the county treasurer, the sheriff or constable shall take duplicate receipts for it, with one (1) to be given to the county clerk and one (1) retained as a voucher for his or her respective settlement with the court.

(2) If any sheriff or constable fails willfully to perform any of the duties prescribed in this subsection, he or she shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars (\$200).

History. Acts 1905, No. 181, §§ 1-3, p. Dig., §§ 13577, 13578; A.S.A. 1947, §§ 84-469; C. & M. Dig., §§ 9836, 9837; Pope's 1510 — 84-1512.

SUBCHAPTER 3 — EXEMPTIONS

SECTION.

26-76-301 — 26-76-303. [Repealed.]

26-76-301 — 26-76-303. [Repealed.]

Publisher's Notes. This subchapter, concerning exemptions, was repealed by Acts 1995, No. 555, § 1. The subchapter was derived from the following sources:

26-76-301. Acts 1939, No. 195, § 1; A.S.A. 1947, § 84-1527.

26-76-302. Acts 1917, No. 268, § 1, p.

1442; C. & M. Dig., § 9843; Pope's Dig., § 13585; A.S.A. 1947, § 84-1526.

26-76-303. Acts 1891, No. 70, § 1, p. 127; 1893, No. 94, § 1, p. 164; C. & M. Dig., § 9841; Pope's Dig., § 13583; A.S.A. 1947, § 84-1525.

CHAPTER 77

MUNICIPAL OCCUPATIONAL TAXES AND LICENSES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PRIVILEGES TAXED GENERALLY.
3. VENDING AND AMUSEMENT MACHINES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

26-77-101. [Repealed.]

26-77-102. Authority to tax or license businesses.

26-77-103. Liability determined from assessment lists.

SECTION.

26-77-104. Publication of licensing ordinance.

26-77-105. Rules and regulations.

Effective Dates. Acts 1917, No. 179, § 3: approved Mar. 6, 1917. Emergency clause provided: "This Act being necessary for the immediate preservation of the public peace, health and safety, shall be in force and effect from and after its passage."

Acts 1919, No. 94, § 7: approved Feb. 19, 1919. Emergency clause provided: "This Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in force from and after its passage."

Acts 1937, No. 294, § 8: approved Mar. 23, 1937. Emergency clause provided: "Whereas, the incorporated towns in this State need an additional source of revenue to carry on their municipal functions; and whereas, many of the towns are in financial distress, an emergency is hereby declared and this Act shall be in full force and effect from and after its passage."

Acts 1985, No. 172, § 3: Feb. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law cities are required to publish occupational licensing ordinances in a newspaper for once a week for four (4) weeks; that the requirement is

burdensome and expensive; and this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1191, § 3: Apr. 9, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that § 26-77-101 inhibits the ability of local governments to enforce laws requiring business licenses; and that this act is immediately necessary because business licenses play an important role in allowing local governments to enforce zoning and other local regulations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-77-101. [Repealed.]

Publisher's Notes. This section, concerning penalties incurred on municipal occupational taxes and licenses, was repealed by Acts 2003, No. 1191, § 1. The section was derived from Acts 1917, No.

179, § 4, p. 980, as added by Acts 1919, No. 94, § 4; C. & M. Dig., § 7621; Acts 1937, No. 294, § 4; Pope's Dig., § 9731; A.S.A. 1947, § 19-4604.

26-77-102. Authority to tax or license businesses.

(a) Any city council, board of commissioners, or board of aldermen of any municipal corporation in this state shall have the power to enact by a two-thirds ($\frac{2}{3}$) vote of all members elected thereto ordinances requir-

ing any person, firm, individual, or corporation who shall engage in, carry on, or follow any trade, business, profession, vocation, or calling, within the corporate limits of the city or town, to pay a license fee or tax, except such persons, firms, individuals, or corporations who pay a tax to the city, town, or state on gross incomes or premium incomes and except their agents.

(b) No person, firm, individual, or corporation shall pay a license fee or tax mentioned in this chapter in more than one (1) city in this state unless such person, firm, individual, or corporation maintains a place of business in more than one (1) city.

(c) The license charged and collected shall be for the privilege of doing business or carrying on any trade, profession, vocation, or calling in the city where the trade, business, profession, vocation, or calling is situated, to take out and procure a license therefor and pay into the city or town treasury before receiving it such a sum or amount of money as may be specified by the ordinance for the license and privilege.

(d) The council or boards shall have the right to classify and define any trade, business, profession, vocation, or calling and to fix the sum or amount any person, firm, individual, or corporation shall pay for the license required for the privilege of engaging in, carrying on, or following any trade, business, vocation, or calling, based on the amount of goods, wares, or merchandise carried in stock in any business, or the character and kind of trade, business, profession, vocation, or calling. However, no classification shall be based upon earnings or income.

(e) The council or boards shall have the full power to punish for violation of these ordinances. Neither the limitation as to the amount of license nor anything contained in this chapter shall be construed as a limitation or restriction upon the power of a city or town to tax, license, regulate, or suppress any trade, business, profession, vocation, or calling in any case in which power has been conferred by any other laws.

History. Acts 1917, No. 179, § 1, p. 980; 1919, No. 94, § 1; C. & M. Dig., § 7618; Acts 1937, No. 294, § 1; Pope's Dig., § 9728; A.S.A. 1947, § 19-4601.

Cross References. General authority to license certain occupations, § 14-54-103.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Construction.

Purpose.

Classification of Trades.

Place of Business.

Power to Tax or License.

Privilege of Doing Business.

Prohibited Classification.

Constitutionality.

This section is constitutional, as it does not discriminate between persons in like situations and pursuing the same classes of occupations. *Rogers v. Rogers*, 174 Ark. 486, 295 S.W. 708 (1927).

Ordinance requiring payment of tax for the privilege of practicing law was held constitutional against contention that tax

was levied for revenue purposes only. *Lister v. Ft. Smith*, 199 Ark. 492, 134 S.W.2d 535 (1939).

Municipal ordinances prohibiting the peddling of books, except the Bible, on the streets and alleys of a municipality without a license therefor and prescribing a fine for violation are, as applied to persons distributing religious books and pamphlets, unconstitutional. *Berry v. City of Hope*, 205 Ark. 1105, 172 S.W.2d 922 (1943).

Convictions under city ordinance requiring charitable and nonprofit organizations that were exempt from city privilege tax to supply certain information including a financial statement including dues, fees, assessments, and contributions, and by whom paid, could not stand under due process clause of U.S. Const. Amend. 14. *Bates v. City of Little Rock*, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960).

Regardless of any asserted disparate treatment, the rational basis test is the analysis applicable to an equal protection challenge of tax legislation; in order for an appellate court to strike down a classification made by taxation legislation, the classification must be purely arbitrary and the discrimination must be invidious. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

Proration of tax for licenses issued in the last half of the tax year, but not the first half of the tax year, did not violate the equal protection or due process clauses of the U.S. and Arkansas Constitutions. *Howard v. City of Ft. Smith*, 311 Ark. 505, 845 S.W.2d 497 (1993).

In General.

This section is a privilege tax, and the exemption from its operation of one who pays for a privilege in another form, and on a different basis, does not necessarily constitute an unjust classification. *Davies v. City of Hot Springs*, 141 Ark. 521, 217 S.W. 769 (1920), questioned, *Cobb v. Burress*, 213 Ark. 177, 209 S.W.2d 694 (1948).

Even if this section would be invalid as to the exemption of persons who pay a tax on gross incomes to the state or a city, it would not be invalid as to those classes of privileges not affected by such exemption. *Davies v. City of Hot Springs*, 141 Ark. 521, 217 S.W. 769 (1920), questioned, *Cobb v. Burress*, 213 Ark. 177, 209 S.W.2d 694 (1948).

Construction.

An ordinance imposing an occupation tax on railroads entering the city will, if possible, be construed to exempt railroads engaged exclusively in interstate commerce. *City of Ft. Smith v. Midland Valley R.R.*, 156 Ark. 479, 246 S.W. 842 (1923).

Purpose.

A city ordinance imposing an occupation tax on various businesses for the purpose of raising revenue is authorized by this section. *Town of Newark v. Edwards*, 208 Ark. 276, 185 S.W.2d 925 (1945).

Classification of Trades.

An ordinance classifying physicians and attorneys for taxation by imposing a greater tax on those who have practiced 10 years or longer violates the provision of this section that no classification shall be based on earnings or income. *Davies v. City of Hot Springs*, 141 Ark. 521, 217 S.W. 769 (1920), questioned, *Cobb v. Burress*, 213 Ark. 177, 209 S.W.2d 694 (1948).

This section should not be construed as prohibiting any city tax which takes into account the size of an enterprise, so long as the amount is not unreasonable and a reasonable relationship exists between the goods and services afforded by the city and the distinctions drawn as to size. *Mountain Home v. Drake*, 281 Ark. 336, 663 S.W.2d 738 (1984).

Where a city ordinance, which imposed an annual fee on persons, firms, and corporations for the privilege of engaging in a business, trade, or vocation within the city, imposed the occupation licensing fee according to the number of units being operated (such as \$7.50 per barber shop chair) and classified certain businesses according to size or units, the ordinance was not based on income or earnings and, therefore, did not violate this section. *Mountain Home v. Drake*, 281 Ark. 336, 663 S.W.2d 738 (1984).

Place of Business.

A city ordinance imposing a broker's tax on persons engaged in buying and selling real estate is valid though they maintain an office in another state. *City of Texarkana v. James & Mayo Realty Co.*, 187 Ark. 764, 62 S.W.2d 42 (1933).

Power to Tax or License.

This section does not prohibit a city of the second class, imposing no occupation

tax, from charging an inspection fee from a plumber licensed in a neighboring city. *Shaw v. Conway*, 179 Ark. 266, 15 S.W.2d 411 (1929).

An ordinance imposing a license tax on certain occupations, including attorneys at law, is valid. *City of Texarkana v. Taylor*, 185 Ark. 1145, 51 S.W.2d 856 (1932).

Municipalities precluded by statute legalizing business of retail liquor dealers from levying and collecting a tax upon them cannot do so under the guise of imposing occupation tax. *Walker v. Pierce*, 192 Ark. 797, 94 S.W.2d 693 (1936).

Ordinance imposing an occupation tax to operate a taxicab service within the corporate limits of a city was held authorized by this section. *Talley v. City of Blytheville*, 204 Ark. 745, 164 S.W.2d 900 (1942).

A taxpayer was not entitled to be exempted completely from the effects of a city ordinance levying an annual business licensing fee merely because this section exempts from an occupation tax any persons, firms, or corporations, "who pay a tax to the city, town or state on gross incomes or premium income," since the state income tax expressly applies only to net income, and if the taxpayer's interpretation of this section were to prevail, it would operate as a wholesale repeal of the occupation tax on which municipalities depend. *Mountain Home v. Drake*, 281 Ark. 336, 663 S.W.2d 738 (1984).

Privilege of Doing Business.

A city ordinance prohibiting peddling without license was not in violation of this section imposing an occupation tax. *Rose v. City of Pine Bluff*, 186 Ark. 157, 52 S.W.2d 979 (1932).

A city ordinance imposing a license fee on persons operating motor vehicles for delivery was invalid as applied to retail grocer delivering to his customers. *Nesler v. City of Paragould*, 187 Ark. 177, 58 S.W.2d 677 (1933).

Where operator of general store installed a meat market in rear of his general store, it was held that, although he was not required to pay a separate tax for the meat market, he was required to pay the higher tax imposed on meat markets instead of the lower tax imposed on gen-

eral stores. *Town of Newark v. Edwards*, 208 Ark. 276, 185 S.W.2d 925 (1945).

Where operator of general store acquired a building apart from one in which he was operating the general store and installed in the new building a stock of hardware and began the operation of a hardware business therein, it was held that he had taken on a new occupation so as to require him to pay a separate occupation tax for the hardware store. *Town of Newark v. Edwards*, 208 Ark. 276, 185 S.W.2d 925 (1945).

Where person was a member of the bar, duly licensed to practice law, his contention that he was not engaged in the practice of law for himself, but only as an agent for his employer and, therefore not liable to the licensing tax imposed by city ordinance could not be maintained; he certainly was engaging in the practice of law where he made appearances in various courts, representing the litigants therein, inasmuch as he could only practice being licensed to practice in his own right and therefore even as an employee he would be subject to and liable for the tax. *Brinton v. City of Jonesboro*, 229 Ark. 944, 320 S.W.2d 272 (1959).

An information found March 8, 1957, more than one year after the date January 21, 1956, on which date lawyer became subject to the penalty assessed for practicing law without obtaining a license was not barred by the statute of limitation, inasmuch as the pertinent fact was that he did not pay the tax for the entire year 1956, it being true he had violated the ordinance on January 21, 1956, but he continually violated the ordinance until December 31, 1956. *Brinton v. City of Jonesboro*, 229 Ark. 944, 320 S.W.2d 272 (1959).

Prohibited Classification.

A city ordinance levying a fee on trash collection businesses within the city equal to ten percent of trash haulers' "gross receipts per month for services rendered within the city limit" was a tax directly upon the income of trash haulers, despite characterization in ordinance as "gross receipts," and violated the prohibition in subsection (d) of this section against classification based on earnings or income. *WSC, Inc. v. City of Jacksonville*, 302 Ark. 295, 789 S.W.2d 448 (1990).

26-77-103. Liability determined from assessment lists.

(a) In ascertaining the persons, firms, individuals, or corporations liable to pay license for the privilege of engaging in any trade, business, profession, vocation, or calling in any city or town, the city council, board of commissioners, or board of aldermen may be governed by the list of persons, firms, individuals, or corporations as shown by the latest records of the county assessor of the county where the city or town is situated.

(b) In making classifications upon the amount of stock, wares, or merchandise on hand or carried in any business, the council or boards may be governed by the latest assessments for personal property on file in the county assessor's office.

(c) The council or boards shall have the right and power to change, increase, or decrease the amount of the license or the number of persons to pay it according to the change in the county assessor's records made from year to year.

History. Acts 1917, No. 179, § 3, p. § 7620; Acts 1937, No. 294, § 3; Pope's 980; 1919, No. 94, § 3; C. & M. Dig., Dig., § 9730; A.S.A. 1947, § 19-4603.

26-77-104. Publication of licensing ordinance.

Any ordinance passed under the provisions of this chapter, before becoming effective, shall be published one (1) time in a newspaper of bona fide circulation in the city or town. The publication shall not be later than one (1) week after the passage of the ordinance.

History. Acts 1917, No. 179, § 5, p. § 5; Pope's Dig., § 9732; Acts 1985, No. 980, as added by Acts 1919, No. 94, § 5; C. 172, § 1; A.S.A. 1947, § 19-4605. & M. Dig., § 7622; Acts 1937, No. 294,

26-77-105. Rules and regulations.

(a) The city council, board of commissioners, or board of aldermen of any city or town by ordinance shall provide all rules and regulations for the payment of a license for the privilege of engaging in any trade, business, profession, vocation, or calling in the city or town.

(b) All persons, firms, individuals, or corporations desiring to engage in any business named in this chapter shall comply with the rules and regulations before engaging in their trade, business, profession, vocation, or calling.

History. Acts 1917, No. 179, § 2, p. § 7619; Acts 1937, No. 294, § 2; Pope's 980; 1919, No. 94, § 2; C. & M. Dig., Dig., § 9729; A.S.A. 1947, § 19-4602.

SUBCHAPTER 2 — PRIVILEGES TAXED GENERALLY**SECTION.**

26-77-201. Mercantile businesses.

26-77-202. Gift enterprises.

SECTION.

26-77-203. Native wine producers.

26-77-204. Auctioneers.

Effective Dates. Acts 1875 (Adj. Sess.), Acts 1913, No. 236, § 4: effective on No. 60, § 2: effective on passage. passage.

26-77-201. Mercantile businesses.

(a) Cities of the first class are authorized to license, regulate, and tax the privilege of engaging in the mercantile business in their cities. However, this section shall not apply to persons who remain in the mercantile business for a continuous period of six (6) months.

(b) Cities of the first class in order to determine who are or may be liable to pay the license or tax may require all persons who enter into the mercantile business in their cities to execute a bond to the city with good and sufficient security, to be approved by the city clerk thereof, conditioned that, if the merchant does not remain in continuous business for a period of six (6) months or longer, then the amount of the license or tax will be paid to the city.

(c) This section shall not apply to or be construed to include any vegetables, grain, fruit, or other farm products or livestock of any description.

History. Acts 1913, No. 236, §§ 1-3; C. §§ 10049, 10050; A.S.A. 1947, §§ 19-4607 & M. Dig., §§ 7750, 7751; Pope's Dig., — 19-4609.

26-77-202. Gift enterprises.

(a)(1) All cities of the first class and cities of the second class are authorized and empowered to license, tax, and regulate gift enterprises, and all persons, firms, and corporations aiding, abetting, or patronizing them.

(2) The license or tax shall not exceed one thousand dollars (\$1,000) per annum for each gift enterprise and five hundred dollars (\$500) per annum for each person, firm, or corporation aiding, abetting, or patronizing the gift enterprise.

(b) As used in this section, "gift enterprise" includes the premium stamp, periodical ticket, trading stamp, and similar schemes and devices, wherein by means of stamps, checks, tickets, or other devices certain merchants, manufacturers, and other persons engaged in lawful occupations or callings are advertised, exploited, and patronized to the exclusion of others on like terms.

History. Acts 1899, No. 21, §§ 1, 2, p. Dig., §§ 9699, 9700; A.S.A. 1947, §§ 19-22; C. & M. Dig., §§ 7604, 7605; Pope's 4611, 19-4612.

CASE NOTES

Constitutionality.

This section is not void as violating U.S. Const. Amend. 14. *Humes v. City of Ft.*

Smith, 93 F. 857 (W.D. Ark. 1899), appeal dismissed, 21 S. Ct. 917, 45 L. Ed. 1257 (1900).

26-77-203. Native wine producers.

(a) A municipality in which the manufacturing facilities of a native wine producer are located and which producer produces four hundred thousand gallons (400,000 gals.) of wine per year or more is authorized to levy a tax of not to exceed three percent (3%) on the gross receipts derived from the sale at retail of native wines at the retail outlet of the native wine producer located within the municipality.

(b) The tax authorized in this section may be levied by ordinance of the governing body of the municipality and shall be collected and remitted to the city treasurer in such manner, and the proceeds thereof may be used for such purposes, as may be prescribed by ordinance.

History. Acts 1979, No. 658, §§ 1, 2;
A.S.A. 1947, §§ 19-4620, 19-4621.

26-77-204. Auctioneers.

The authorities of cities and incorporated towns may levy and collect a tax of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) per annum from each and every public auctioneer who may follow his or her occupation in the cities or incorporated towns.

History. Acts 1875 (Adj. Sess.), No. 60,
§ 1, p. 122; C. & M. Dig., § 7582; Pope's
Dig., § 9661; A.S.A. 1947, § 19-4610.

SUBCHAPTER 3 — VENDING AND AMUSEMENT MACHINES

SECTION.

26-77-301. Vending machines.

26-77-302. Amusement games and vendors.

SECTION.

26-77-303. Coin-operated amusements.

Cross References. Vending Devices,
§ 26-57-1201 et seq.

Effective Dates. Acts 1939, No. 201,
§ 12: approved Mar. 9, 1939. Emergency
clause provided: "Whereas, there is no
adequate law in this State defining and
regulating amusement games and
whereas without such law the State is
being deprived of revenue upon such busi-
ness through the unregulated conduct
thereof, and whereas the passage of such
law is necessary for the immediate pres-
ervation of the public peace, health and
safety of the inhabitants of this State, an
emergency exists and this Act shall take
effect and be in force from and after its
passage."

Acts 1981, No. 868, § 5: Mar. 28, 1981.
Emergency clause provided: "It is hereby

found and determined by the General As-
sembly that the law relating to licensing
of persons owning, operating and leasing
coin operated amusement devices con-
tains certain residency restrictions re-
garding the issuance of such licenses; that
such law is inappropriate as applied to
persons seeking licenses to operate coin
operated amusement games at carnivals
and county, district and state fairs; that
this Act is designed to amend such law to
provide for the licensing of such persons
and should be given effect immediately.
Therefore, an emergency is hereby de-
clared to exist and this Act being immedi-
ately necessary for the preservation of the
public peace, health and safety shall be in
full force and effect from and after its
passage and approval."

26-77-301. Vending machines.

All municipal corporations may license and tax vending machines regulated by §§ 26-57-302 [repealed], 26-57-307 — 26-57-310 [repealed], 26-57-313 [repealed], and this section. However, the fee shall not exceed the amount of tax imposed by these statutes.

History. Acts 1947, No. 344, § 5; A.S.A. 1947, § 84-2609.

Publisher's Notes. Subchapter 3 of chapter 57 of this title, including §§ 26-57-302, 26-57-307 — 26-57-310, and 26-57-313, referred to in this section, was

repealed by Acts 1993, No. 344, § 2. For the current laws regulating vending devices, see § 26-57-1001 et seq., and the Vending Devices Decal Act of 1997, § 26-57-1201 et seq.

26-77-302. Amusement games and vendors.

All municipal corporations may license and tax amusement games and vendors described in §§ 26-57-306 [repealed] and 26-57-402. However, the fee shall not exceed the amount of tax imposed by §§ 26-57-306 [repealed], 26-57-404, and 26-57-405.

History. Acts 1939, No. 201, § 10; A.S.A. 1947, § 84-2617.

referred to in this section was repealed by Acts 1993, No. 344, § 2.

Publisher's Notes. Section 26-57-306

26-77-303. Coin-operated amusements.

No municipality may levy a privilege tax on the basis of §§ 26-57-402 and 26-57-408 — 26-57-421, relating to coin-operated amusements. However, nothing in §§ 26-57-402 and 26-57-408 — 26-57-421 shall be construed to prohibit municipalities from levying privilege taxes on licensees §§ 26-57-402 and 26-57-408 — 26-57-421, under other statutes of this state, or under valid municipal ordinances.

History. Acts 1977, No. 553, § 4; 1981, No. 868, § 2; A.S.A. 1947, § 84-2636.

CHAPTER 78

COUNTY AND MUNICIPAL MOTOR VEHICLE TAX

SECTION.

- 26-78-101. Construction.
- 26-78-102. Authority to levy vehicle tax.
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- 26-78-104. Classification of vehicles —
Maximum tax.
- 26-78-105. Payment of tax — Penalty.
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SECTION.

- bonds by counties and municipalities.
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ment.
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- 26-78-119. Legal investments.

SECTION.

26-78-120. Authority to levy a tax to finance or support a regional mobility authority.

Effective Dates. Acts 1965, No. 446, § 17: Mar. 20, 1965. Emergency clause provided: "It is hereby ascertained and declared that there is an immediate and urgent need for the construction and reconstruction of roads, bridges, streets and public ways in order that the same be made safe and adequate for the needs of the public and so that the public health, safety and welfare be protected, and that this can be done only by the levying of the vehicle tax, the issuance of bonds and the taking of the action herein authorized. It is, therefore, declared that an emergency exists and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force immediately upon and after its passage and approval."

Acts 1967, No. 647, § 3: Apr. 11, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that adequate ambulance services are not available in many cities and counties of this State and that many cities and towns are in dire need of funds with which to partially or wholly finance ambulance services for residents of such cities and counties; and cities and counties are authorized by Act 446 of 1965, as amended, to levy a motor vehicle tax but are authorized to use revenues therefrom only for street and road purposes; and, that this Act is immediately necessary to permit cities and counties to use revenues from motor vehicle taxes levied pursuant to Act 446 of 1965, as amended, to provide ambulance services for their residents. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1969, No. 97, § 5: Feb. 24, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that prior to 1967 the municipalities in this State were authorized to levy a motor vehicle tax by action of the governing bodies of the city; that Act 372 of 1967 requires a vote of the qualified electors of the city to levy such tax; that the requirement of approval of the people results in considerable expense to the city in levying such tax although such cities may have levied the tax prior to the 1967 revision and that this Act should become effective immediately in order to relieve the cities of this undue burden. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 372, § 3: Mar. 15, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that adequate public transportation is not available in many cities and counties of this State, that many cities and counties are in dire need of funds with which to purchase or wholly finance the acquisition, operation and maintenance of public transportation facilities and equipment; that this Act is immediately necessary to permit cities and counties to use revenues from motor vehicle taxes received pursuant to the authority identified in Section 1 hereof to provide such public transportation services, facilities and equipment; now therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety should be effective from the date of its passage and approval."

26-78-101. Construction.

This chapter shall be liberally construed to accomplish this chapter's purposes.

History. Acts 1965, No. 446, § 14;
A.S.A. 1947, § 76-2314.

26-78-102. Authority to levy vehicle tax.

(a) In addition to such taxes as are levied by the State of Arkansas for the privilege of using and operating motor vehicles on the public roads and highways of this state, the counties of the state and municipalities therein under the conditions set forth in this chapter are authorized, respectively, to levy a tax to the maximum amount specified in § 26-78-104 upon the owners of motor vehicles for the privilege of using and operating their vehicles upon the public roads, streets, and other public ways in the county or municipality.

(b) The levy of the tax authorized by this chapter when made by a county shall be by resolution adopted by the quorum court of the county, and when made by a municipality shall be by resolution adopted by the governing body of the municipality.

(c) The tax authorized in this chapter to be levied shall be designated and known as the "County and Municipality Vehicle Tax".

History. Acts 1965, No. 446, § 1; A.S.A. 1947, § 76-2301.

26-78-103. Procedure for levying.

(a)(1) The counties of the state shall have the first opportunity to levy the County and Municipality Vehicle Tax.

(2)(A) Any levy by a county may be upon owners residing everywhere in the county or only upon owners residing within the county but outside the corporate boundaries of all municipalities in the county.

(B) That is, the tax must cover the entire county or the area outside all municipalities and cannot cover some municipalities and omit others.

(3) This levy may be in any amount not exceeding the authorized maximum.

(4) A municipality in a county may levy the tax only if the county quorum court by the time of adjournment of its regular annual session in any calendar year has failed to levy the tax upon the owners residing within the corporate limits of the municipality or if by the time of adjournment the court has not levied the full amount of the authorized tax for the next calendar year at the regular annual session or at any special session held in any calendar year prior to its regular annual session in the calendar year.

(5) Each levy by the county quorum court or by the governing body of the municipality shall be for collection during the calendar year next following the year in which the levy is made and, except in the case

when bonds are issued as authorized, unless the levy is again made, the tax shall drop at the expiration of the calendar year for which collected and shall not again be collected until levied by the county quorum court by the time of adjournment of the regular annual session of the county quorum court or thereafter by the governing body of a municipality, as indicated.

(b)(1) Notwithstanding other provisions of this chapter, before the tax levied by any county quorum court upon owners residing everywhere in the county or only upon owners residing within the county but outside the corporate boundaries of all municipalities in the county may be collected, the county court shall call a special election in accordance with § 7-5-103(b) upon the first levy of the tax by the county quorum court, to be held not more than ninety (90) days from the date of the adoption of the levy of the tax by the quorum court, at which the qualified electors of the area to be affected by the tax shall vote on the question of the levy of the tax.

(2) If at the special election a majority of the qualified electors of the area affected by the tax voting on the issue at the special election shall vote for the levy of the tax, the tax may be thereafter levied in the area in the manner authorized in subsection (a) of this section, and it shall not be necessary that an election be called again in the area on the question of levying the tax.

(3) If a majority of the qualified electors of the affected area voting on the issue at the special election shall vote against the levy of the tax, the tax shall not be levied in the area.

(4) The quorum court of the county at any subsequent annual meeting may propose the levy of the tax, and the election on the tax shall be called as provided in this section.

(5) A special election held pursuant to this chapter shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, the counting, tabulation, and certification of the special election results shall be in the manner provided by law.

(c)(1) Any tax levied by any municipality under the provisions of this chapter for the first time prior to July 1, 1967, and without the calling of a special election of the qualified electors of the municipality, shall continue in full force and effect without the calling of an election.

(2) However, before the tax levied by the governing body of any municipality for the first time after July 1, 1967, upon vehicle owners residing in the municipality may be collected, the mayor shall call a special election in accordance with § 7-5-103(b) to be held not more than ninety (90) days from the date of the adoption of the levy of the tax by the governing body of the municipality, at which the qualified electors of the municipality shall vote on the question of the levy of the tax.

(3) At the special election, if a majority of the qualified electors of the municipality voting on the issue shall vote for the levy of the tax, the tax may be thereafter levied in the municipality in the manner authorized

in subsection (a) of this section, and it shall not be necessary that an election be called again in the municipality on the question of levying the tax.

(4) If a majority of the qualified electors of the municipality voting on the issue at the special election shall vote against the levy of the tax, the tax shall not be levied in the municipality.

(5) However, the governing body of the municipality at any time after the expiration of one (1) year from the election in the municipality may propose the levy of the tax, and the election on the tax shall be called as provided in this section.

(6) A special election held pursuant to this chapter shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, the counting, tabulation, and certification of the special election results shall be in the manner provided by law.

History. Acts 1965, No. 446, § 2; 1967, No. 372, § 1; 1969, No. 97, § 1; A.S.A. 1947, § 76-2302; Acts 2005, No. 2145, § 75; 2007, No. 1049, § 96.

Amendments. The 2005 amendment inserted the present subdivision designations; substituted "sixty (60)" for "thirty (30)" in present (b)(1) and (c)(2); and added (b)(2) and (c)(3).

The 2007 amendment, in (b), inserted "in accordance with § 7-5-103(b)" and substituted "not more than ninety (90)" for "not less than twenty (20) days nor more than sixty (60)" in (1), and deleted former (2) and redesignated the remain-

ing subdivisions accordingly; and in (c), inserted "in accordance with § 7-5-103(b)" and substituted "not more than ninety (90)" for "not less than twenty (20) days nor more than sixty (60)" in (2), and deleted former (3) and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 1967, No. 372, § 2, provided that the provisions of this act shall be applicable with respect to the levy of a vehicle tax for the year 1968 and thereafter and shall in no way affect the levy of such tax by any municipality for the year 1967.

26-78-104. Classification of vehicles — Maximum tax.

(a) The resolution of the county quorum court or of the governing body of a municipality, as the case may be, may contain a classification of vehicles by types and the rate of the County and Municipality Vehicle Tax levy, stated in dollars and cents, to be collected from the owners of the vehicles coming within the classifications. However, no such classification at the time of the adoption of any resolution shall include any vehicle for the use of which a state tax or fee for the registration or licensing of motor vehicles is not at the time levied upon the owner.

(b)(1)(A) The maximum vehicle tax which may be levied and collected shall not exceed five dollars (\$5.00) per year per vehicle, irrespective of its classification.

(B) The owner of a vehicle, having paid the vehicle tax in any one (1) county or municipality for a particular year, shall not be required to pay the vehicle tax for the use of the same vehicle in any other county or municipality for the same year.

(2)(A) If the county quorum court levies the full five dollars (\$5.00) per year per vehicle for the next calendar year throughout the county, then no municipality in that county shall levy any tax for the same

year, it being declared that the maximum amount that shall be paid by any owner for any vehicle for any year under this chapter shall be five dollars (\$5.00).

(B) If the county levies the vehicle tax but excludes the municipalities therein, then any municipality may levy any amount up to the maximum amount of five dollars (\$5.00).

(C) If the county levies the vehicle tax throughout the county but levies less than five dollars (\$5.00), then any municipality may levy any amount up to the maximum amount which, together with the amount levied by the county quorum court, will not exceed five dollars (\$5.00).

History. Acts 1965, No. 446, § 3; A.S.A. 1947, § 76-2303.

26-78-105. Payment of tax — Penalty.

(a)(1) The County and Municipality Vehicle Tax shall be due and payable, without penalty, during the month of January of the calendar year next following the year in which the levy is made.

(2) Penalty for delinquent payment of the vehicle tax shall be one dollar (\$1.00) per vehicle per month for each month's delinquency.

(b)(1) Any owner of any vehicle delinquent in the payment of the vehicle tax for more than five (5) months who after the five (5) months shall use and operate the vehicle upon the public roads, streets, and other public ways within the county or municipality levying the vehicle tax or who shall knowingly permit the vehicle to be so used and operated by another person shall be guilty of a violation and upon conviction shall be fined any sum not less than twenty-five dollars (\$25.00) and not more than fifty dollars (\$50.00) for each violation.

(2) The fine assessed in subdivision (b)(1) of this section shall be in addition to the vehicle tax and penalty provided in subsection (a) of this section.

(c)(1) The owner of any vehicle first acquired or first used in the county after July 1 of the taxable year shall be required to pay only one-half ($\frac{1}{2}$) of the annual rate of the vehicle tax for the remainder of the calendar year, and the vehicle tax may be paid without penalty during the thirty-day period next following the date of the first acquisition or first use of the vehicle.

(2) However, no vehicle tax shall be required of the owner if the vehicle tax for the particular year has been paid by a former owner of the vehicle, whether or not in the same county or municipality.

History. Acts 1965, No. 446, § 4; A.S.A. 1947, § 76-2304; Acts 2005, No. 1994, § 181.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b).

26-78-106. Collection of tax — Receipts.

(a) The County and Municipality Vehicle Tax in the case of a levy by the county shall be collected by the county collector and may be collected at the time personal property taxes of the county are due on personal property of the taxpayer, or may be collected at any time the quorum court determines is reasonable and expedient for the collection of the tax.

(b) The county collector's commission for collecting the tax shall be three percent (3%) of the total amount collected.

(c) Consecutively numbered receipts, printed in duplicate, shall be used by the county collector to acknowledge payment of the tax. Each receipt shall have printed on it:

- (1) The name of the county;
- (2) The name of the tax;
- (3) The year of the tax;
- (4) Space for indicating:
 - (A) The name and address of the taxpayer;
 - (B) The date of payment;
 - (C) The amount of tax;
 - (D) The amount of penalty;
 - (E) The total amount collected;
 - (F) The make and year model of the vehicle; and
 - (G) The state motor vehicle license number at the time attached to the vehicle; and
- (5) Space for the signature of the county collector.

(d) At the time of issuing his or her receipt, the county collector shall also deliver to the taxpayer a windshield sticker, metal tag, or other type of identification to be attached to the vehicle by the owner.

(e) A new series of receipts shall be issued for each year's tax. A separate receipt shall be issued for each vehicle, the original of which shall be given to the taxpayer at the time of payment of the tax. The duplicate receipt shall be retained by the county collector for accounting and auditing purposes.

(f) In the case of municipalities levying the tax, the municipal officer designated by ordinance shall collect the tax and shall follow insofar as practicable the same procedure as set forth in this section with reference to collection by the county collector for the county.

History. Acts 1965, No. 446, § 5; 1979, No. 1017, § 1; A.S.A. 1947, § 76-2305.

26-78-107. Disposition of revenues.

(a) For the purpose of segregating and keeping apart the revenues derived from the County and Municipality Vehicle Tax from the other revenues of the county or the municipality, as the case may be, there shall be established a separate account, styled "... County Vehicle Tax Account", in the case of a county, and "... Municipality Vehicle Tax Account", in the case of a municipality, in a bank that is an authorized

depository of county funds in the case of a county and municipal funds in the case of a municipality. All revenues derived from the tax shall be deposited into the separate account.

(b) Withdrawals shall be made from the separate account only for the purpose of paying the cost of duplicate receipts, windshield stickers, or other types of identification to be attached to vehicles as required under this chapter, for payment of the county collector's commission, and thereafter, for transmittal to the county treasurer in the case of the county tax and to the treasurers of the respective municipalities in the county in the case of the municipal tax.

History. Acts 1965, No. 446, § 6; A.S.A. 1947, § 76-2306.

26-78-108. Disbursement of revenues.

(a) In the case of the County and Municipality Vehicle Tax, the county treasurer not later than the tenth day next following the end of each calendar month shall distribute the revenues so received by the county treasurer as follows:

(1) Each municipality shall receive by deposit with the municipal treasurer the full amount paid by a taxpayer residing at the time of payment as reflected by the address of the taxpayer on the receipt referred to in § 26-78-106 within the corporate limits of the municipality; and

(2) The county shall receive the full amount paid by a taxpayer residing at the time of payment as reflected by the address of the taxpayer on the receipt referred to in § 26-78-106 in the county but outside of the corporate limits of any municipality in the county.

(b) Except in the case of the issuance of bonds, as provided, proceeds of the vehicle tax shall be handled as follows:

(1) Proceeds of the vehicle tax received by the county treasurer shall be credited to the county highway fund, there to be used for the maintenance, construction, and reconstruction of roads, bridges, and other public ways in the county highway system. The county treasurer shall be entitled to a commission of two percent (2%) for handling the funds;

(2) Proceeds of the tax received by the treasurer of each municipality from collections pursuant to the levy by the county quorum court shall be credited to the street fund, there to be used for the maintenance, construction, and reconstruction of streets and other public ways in the municipality; and

(3) Proceeds received from a levy made directly by the governing body of a municipality, pursuant to the authority and subject to the conditions set forth in this chapter, shall be credited by the treasurer of the municipality to the street fund, there to be used for the maintenance, construction, and reconstruction of streets and other public ways in the municipality.

(c) All vehicle tax revenues received by the county and the municipality shall be revenues of the year in which received by the respective treasurers thereof.

History. Acts 1965, No. 446, § 7; A.S.A. 1947, § 76-2307.

26-78-109. Additional uses of revenues authorized.

(a) Any county or municipality levying the County and Municipality Vehicle Tax as authorized in this chapter, in addition to the uses authorized in this chapter, may use revenues derived from the tax for the purpose of providing ambulance services in the county or municipality, for purchasing firefighting equipment, and for providing municipal parks.

(b) Twenty-five percent (25%) of all revenues derived from the levy of the tax by any municipality shall be used for the construction and maintenance of local parks and outdoor recreation areas. If any municipality shall not have any local parks or outdoor recreation areas, then all revenues derived from imposing the tax shall be used in the manner and for the purposes provided by law.

(c) Any county or municipality levying the motor vehicle tax as authorized by this chapter and any municipality levying a motor vehicle tax as authorized by §§ 14-57-701 — 14-57-712, in addition to the uses authorized in these statutes, may use revenues derived from the tax for the purpose of purchasing, owning, operating, and maintaining a public transportation system with all facilities and equipment useful thereto in providing public transportation to the residents and citizens thereof.

History. Acts 1967, No. 647, § 1; 1969, No. 97, § 2; 1973, No. 372, § 1; A.S.A. 1947, §§ 76-2302.1, 76-2315, 76-2316.

26-78-110. Authority to issue revenue bonds by counties and municipalities.

(a) Counties and municipalities are authorized to issue revenue bonds and to use the proceeds thereof either alone or together with other available funds and revenues for, in the case of the counties, the construction and reconstruction of roads, bridges, and other public ways in the county highway system including, without limitation, the acquisition of rights-of-way, and in the case of municipalities, the construction and reconstruction of streets and other public ways in the municipality including, without limitation, the acquisition of rights-of-way, and, in either case, to pay necessary incidental expenses, to pay the expenses of the bonds, and to provide for interest on bonds until revenues are available for the payment thereof.

(b) The issuance of revenue bonds shall be by ordinance in the case of a municipality and by order of the county court in the case of a county.

History. Acts 1965, No. 446, § 8; A.S.A. 1947, § 76-2308.

26-78-111. Election required.

(a) Revenue bonds may be issued only with the approval of a majority of the qualified electors of the municipality or county voting at an election called for that purpose.

(b) An election on the question of issuing revenue bonds shall be held at such time as the governing body of the municipality or the county court of a county shall designate by ordinance or order.

(c) The ordinance or order shall specifically state the purpose for which the bonds are to be issued, the total amount of the issue, and the date upon which the election is to be held, which date shall not occur earlier than thirty (30) days after the passage of the ordinance or the entering of the order.

(d) The election shall be held and conducted, the vote canvassed, and the results declared in the manner provided for municipal or county elections, so far as they may be applicable, except as otherwise provided.

(e) Notice of the election shall be given by the governing body of the municipality or the county in a newspaper of general circulation within the municipality or county one (1) time a week for four (4) consecutive weeks, with the last publication to be not less than ten (10) days prior to the date of the election.

(f) Only qualified electors of the municipality or county shall have a right to vote at the election, and the results of the election shall be proclaimed by the governing body of the municipality or county and shall be conclusive unless attacked in the courts within thirty (30) days after the date of the proclamation.

History. Acts 1965, No. 446, § 8; A.S.A. 1947, § 76-2308.

26-78-112. Nature of bonds.

(a) As the county court in the case of bonds issued by a county, and the governing body of the municipality in the case of bonds issued by a municipality, shall determine, the bonds may:

(1) Be coupon bonds, payable to bearer, or may be made registrable as to principal only with interest coupons, or may be made registrable as to both principal and interest without coupons, and may be made exchangeable into bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds payable to bearer, or coupon bonds registrable as to principal only, or bonds registrable as to both principal and interest without coupons;

(2) Be in such form and denomination;

(3) Have such date or dates;

(4) Be stated to mature at such times;

(5) Bear interest payable at such times and at such rate or rates;

(6) Be made payable at such places within or without the State of Arkansas;

(7) Be made subject to such terms of redemption in advance of maturity at such prices; and

(8) Contain such other terms and conditions.

(b) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownership, as set forth in this subchapter.

History. Acts 1965, No. 446, § 8; A.S.A. 1947, § 76-2308.

26-78-113. Issuance of bonds.

(a) The bonds may be issued in one (1) or more series, and there may be successive bond issues for the purpose of accomplishing the authorized purposes, subject however, to the provisions and restrictions set forth in the authorizing order or ordinance, as the case may be, controlling priority between and among issues and successive issues as to security.

(b) The order or ordinance may provide for the execution by the county or municipality of an indenture which, among other matters, defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders.

(c) The indenture may control the priority between and among issues and successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The disposition of pledged revenues;

(3) The maintenance of various funds and reserves;

(4) The nature and extent of the security;

(5) The rights, duties, and obligations of the county or the municipality and the trustee for the holders and registered owners of the bonds; and

(6) The rights of the holders and registered owners of the bonds.

(d) In the event the county court of the county or the governing body of the municipality, as the case may be, determines that an indenture is not necessary or desirable, then the details set forth in this section which may be included in the indenture in lieu of the indenture may be included in the authorizing order of the county court or the authorizing ordinance of the municipality, as the case may be.

(e) It shall not be necessary for any municipality to publish any indenture if the ordinance authorizing the indenture is published as required by law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture is on file in the office of the clerk or recorder of the municipality for inspection by any interested person, and the copy of the indenture is filed with the clerk or recorder of the municipality.

History. Acts 1965, No. 446, § 8; A.S.A. 1947, § 76-2308.

26-78-114. Sale of bonds.

(a) All bonds issued under this chapter may be sold for such price, including, without limitation, sale without discount, and in such manner as the county or municipality may determine, but in no event shall the county or the municipality be required to pay more than four and one-half percent (4.5%) interest on the amount received, computed with relation to the absolute maturity of the bonds in accordance with the standard tables of bond values.

(b) The bonds may be sold with the privilege of conversion into an issue bearing a lower rate or rates of interest, upon such terms and conditions as the county or municipality shall determine, but each such determination shall include the condition that the county or municipality receive no less and pay no more than it would receive and pay if the bonds were not converted. The conversion shall be subject to the approval of the county court in the case of bonds issued by the county and to the approval of the governing body of the municipality in the case of bonds issued by the municipality.

History. Acts 1965, No. 446, § 9; A.S.A. 1947, § 76-2309.

26-78-115. Execution of bonds.

(a) Bonds shall be executed by the manual or facsimile signature of the county judge and by the manual signature of the county clerk in the case of county bonds and by the manual or facsimile signature of the mayor and the manual signature of the clerk or recorder in the case of bonds issued by a municipality.

(b) Coupons attached to the bonds shall be executed by the facsimile signature of the county judge in the case of bonds issued by a county and by the facsimile signature of the mayor in the case of bonds issued by a municipality.

(c) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, the signatures shall nevertheless be valid and sufficient for all purposes.

History. Acts 1965, No. 446, § 10; A.S.A. 1947, § 76-2310.

26-78-116. Obligation of bonds — Payment.

(a) Revenue bonds issued under this chapter shall not be general obligations of the county or of the municipality but shall be special obligations, and in no event shall the revenue bonds issued under this chapter constitute an indebtedness of the county or the municipality within the meaning of any constitutional or statutory limitation. It

shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the county or municipality within any constitutional or statutory limitation.

(b) The principal of and interest on the revenue bonds shall be payable from the net revenues derived from collections of the County and Municipality Vehicle Tax. Net revenues are defined as the revenues which are available to the county treasurer and the municipal treasurer after payment of the cost of duplicate receipts, windshield stickers, or other types of identification attached to vehicles as required under this chapter, and payment of collector's commissions, all as specified in this chapter. In this regard, provision may be made for the depositing of the net revenues into a special trust fund to be used for no other purpose than that specified in the authorizing order of the county court or the authorizing ordinance of the municipality.

(c) Provision may be made in the authorizing order or the authorizing ordinance, or in any indenture provided for therein, for the pledging of all or a specified portion of the proceeds of the net revenues to a particular bond issue, with or without provision for subsequent issues payable from the net revenues on such terms and pursuant to such conditions as may be specified, or a specified portion of the net revenues may be set aside for a particular bond issue, with that bond issue having no call or pledge on the remaining portion of the net revenues which shall then be available for the purposes authorized by this chapter or for the pledging to subsequent bond issues.

(d)(1) Once any bonds are issued by a county or by a municipality, then the tax, the net revenues of which are pledged to the bonds, shall constitute and be deemed to be a continuing annual tax which shall not and cannot be made to terminate and which must be collected each year thereafter, without the necessity for any further or additional action by the levying body, for as long as shall be necessary to pay in full the entire principal of and interest on all revenue bonds issued under this chapter to the payment of which the revenues are pledged.

(2) In this regard, however, if a municipality has issued bonds and pledged thereto the revenues received by it under § 26-78-108(a)(1), the vehicle tax levied by the county shall be a continuing annual tax only in the municipalities that have pledged the revenues to bonds to the extent of the pledge. If the county quorum court does not levy the county tax for any year thereafter, the continuing annual tax applicable to a municipality shall by that fact become a municipal tax to be collected and handled under the applicable provisions of this chapter as though levied by the municipality under this chapter.

History. Acts 1965, No. 446, § 11;
A.S.A. 1947, § 76-2311.

26-78-117. Issuance of refunding bonds.

(a) Revenue bonds may be issued for the purpose of refunding any obligations issued under this chapter. The refunding bonds may be combined into a single issue with bonds issued under the provisions of this chapter for the purpose of providing funds for financing additional construction and reconstruction work specified in this chapter. When bonds are issued for refunding purposes, the refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited into escrow for the retirement thereof.

(b) All bonds issued under this section in all respects shall be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of such bonds. The order or ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1965, No. 446, § 12;
A.S.A. 1947, § 76-2312.

26-78-118. Bonds — Tax exemption.

Interest on all bonds issued under this chapter shall be exempt from state income taxes, and the principal thereof shall be exempt from state inheritance and estate taxes.

History. Acts 1965, No. 446, § 13;
A.S.A. 1947, § 76-2313.

26-78-119. Legal investments.

Bonds issued under this chapter shall be eligible to secure deposits of all public funds and shall be legal for the investment of bank, fiduciary, insurance company, and trust funds.

History. Acts 1965, No. 446, § 13;
A.S.A. 1947, § 76-2313.

26-78-120. Authority to levy a tax to finance or support a regional mobility authority.

(a)(1) In addition to all other taxes imposed under this chapter for the privilege of using and operating vehicles, a county that is a member of a regional mobility authority may impose an additional tax upon the owner of a motor vehicle for the privilege of operating the motor vehicle upon the public roads, streets, and other public ways in the county.

(2) The tax revenues collected under this section shall be used only for the finance or support of the regional mobility authority.

(b) The tax revenues shall be collected by the county collector pursuant to §§ 26-78-105 and 26-78-106.

(c) Notwithstanding the provisions of § 26-78-104, the amount of the tax revenues collected under this section shall be determined by the county quorum court and may exceed the maximum amount set forth in § 26-78-104.

(d) The procedure for implementing a tax under this section shall be as provided under § 26-78-103.

History. Acts 2005, No. 2275, § 6.

CHAPTER 79

COUNTY ROAD TAX

SECTION.

26-79-101. Levy of tax and collection.
 26-79-102. Levy when not voted.
 26-79-103. Account of money collected.
 26-79-104. Apportionment to municipalities.

SECTION.

26-79-105. Appropriation of funds.
 26-79-106. Interest earned on funds.

Cross References. County road tax, Ark. Const. Amend. No. 61.

Effective Dates. Acts 1871, No. 26, § 74: effective on passage.

Acts 1893, No. 115, § 8: effective on passage.

Acts 1893, No. 177, § 9: effective on passage.

Acts 1937, No. 153, § 4: approved Feb. 26, 1937. Emergency clause provided: "Whereas, because of lack of funds for use in repairing the streets and bridges within the cities and towns of this State, said streets and bridges are becoming impass-

able and are a menace to the citizens of this State and to their safety and happiness; and

"Whereas, in many cities and towns in the State, none of the annual three (3) mill road tax collected on property within the cities and towns is being expended for any improvement in the streets and bridges of said cities and towns which is manifestly unjust, and emergency is hereby recognized and declared to exist and this act shall be in full force and effect from and after its passage."

Act 1991, No. 275, § 2: Jan. 1, 1992.

26-79-101. Levy of tax and collection.

(a) The county court together with a majority of the justices of the peace of the county at the regular term thereof for making the appropriations and levying taxes for the ensuing year may appropriate and levy not exceeding three (3) mills as the road and bridge tax on all of the taxable property of the county.

(b) The tax shall be collected by the county collector of the state and county taxes in the same manner as the state and county taxes are collected, except the county collector shall only receive in payment of the road and bridge tax levied under this chapter United States currency or county warrants legally drawn on the road tax fund, on the certificate or receipt of overseers as provided in this chapter.

(c) When the county collector shall pay into the county treasury the taxes so collected, the county shall take the county treasurer's receipt for so much money paid into the credit of the district on account of roads and bridges.

(d) If the taxes are not paid as provided, the property shall be sold in the same manner that property is sold for the nonpayment of taxes.

History. Acts 1899, No. 200, § 6, p. 347; C. & M. Dig., § 5490; Pope's Dig., § 7132; A.S.A. 1947, § 76-702.

26-79-102. Levy when not voted.

The county court in the counties in this state that do not require the full constitutional limit of five (5) mills to be levied for the expenses of the county government of the county at its sittings for levying taxes and making appropriations may levy for any one (1) year a road tax on all the taxable property of the county not exceeding three (3) mills.

History. Acts 1893, No. 115, § 2, p. 201; C. & M. Dig., § 5492; Pope's Dig., § 7134; A.S.A. 1947, § 76-707.

CASE NOTES

Applicability.

Acts 1913, No. 230, authorizing division of road funds to El Dorado, had no refer-

ence to tax raised under this section. *El Dorado v. Union County*, 122 Ark. 184, 182 S.W. 899 (1916).

26-79-103. Account of money collected.

It shall be the duty of the county treasurer to:

(1) Keep a separate account of all moneys received on account of the road and bridge tax, receipting therefor to the county collector; and

(2) Annually, at the proper term of the county court, present the county treasurer's accounts for settlement for all moneys received and disbursed on account of roads and bridges in the same manner as the other county receipts and expenditures are settled.

History. Acts 1899, No. 200, § 8, p. 347; C. & M. Dig., § 5502; Pope's Dig., § 7144; A.S.A. 1947, § 76-703.

CASE NOTES

Compensation.

With respect to the compensation of the county treasurer, the road tax fund is one

fund although separated into many funds. *Hodges v. Prairie County*, 80 Ark. 62, 95 S.W. 988 (1906).

26-79-104. Apportionment to municipalities.

(a) Of the amount collected from the annual three-mill road tax in any county in the state, the county courts shall apportion one-half ($\frac{1}{2}$), except when a greater amount is allowed by law, of the amount collected upon property within the corporate limits of any city or town for use in making and repairing the streets and bridges in the respective cities or towns.

(b) The county collector of any county in the state shall pay into the treasury of the respective cities or towns the amount so apportioned by the county court, which amount shall be expended exclusively by the cities or towns for the purpose of making and repairing the streets and bridges within the corporate limits of the town or city.

(c) This section shall not repeal, alter, change, or affect any special act passed under which any city or town is receiving any greater or lesser amount than the three-mill county road tax.

History. Acts 1937, No. 153, § 1-3; Pope's Dig., §§ 9832, 9833; A.S.A. 1947, §§ 76-704 — 76-706.

Publisher's Notes. Acts 1973, No. 133, § 1, repealed Acts 1937, No. 393, and

provided that all municipalities previously affected by Acts 1937, No. 393 would be governed by this section.

Cross References. Government Compliance Act, § 10-4-301 et seq.

CASE NOTES**ANALYSIS**

Constitutionality.
Applicability.

Constitutionality.

Acts 1911, No. 351, granting city of Texarkana three-fifths of road tax, held not in conflict with Const. Art. 7, § 28, giving county courts exclusive jurisdiction over county roads. *Sanderson v. City of Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912) (decision under prior law).

This section is not unconstitutional as a special act by reason of exclusion contained in this section. *Kelleher v. Burlingame*, 195 Ark. 152, 110 S.W.2d 1065 (1937).

Acts 1953, No. 563, authorizing county court of Pulaski county to apportion annual three-mill road tax to cities and towns within the county 75% of tax collected upon property within municipalities for making and repairing of public roads and bridges, held unconstitutional, since it was special legislation. *City of Little Rock v. Campbell*, 223 Ark. 746, 268 S.W.2d 386 (1954).

Applicability.

Acts 1913, No. 230, authorizing division of road funds to El Dorado, had no applicability to tax raised under provision of § 26-79-102. *El Dorado v. Union County*, 122 Ark. 184, 182 S.W. 899 (1916) (decision under prior law).

Acts 1927, No. 81, appropriating 50% of road tax to cities of second class, applied to road tax collected under special act where the special act did not provide for any division of the road taxes. *City of Conway v. Summers*, 176 Ark. 796, 4 S.W.2d 19 (1928) (decision under prior law).

Acts 1927, No. 81 did not repeal Acts 1921, No. 219, granting to cities and incorporated towns in Johnson County the per capita and road taxes collected within them, as to such per capita tax in second-class cities, nor as to incorporated towns, but did repeal such act as to road tax collected in cities of the second class in Johnson County. *Johnson County v. Hartman*, 177 Ark. 1009, 8 S.W.2d 469 (1928) (decision under prior law).

26-79-105. Appropriation of funds.

(a) The county courts shall have the power, and it is required, to appropriate all moneys collected under this act as road tax to the opening, construction, and repair of roads in the road districts in the county when they may have been collected.

(b) The county court or county judge shall order and direct the county highway commission, or overseers of each road district wherein the opening, constructing, or repairing of roads is to be done, to make the contract for such opening, constructing, or repairing in such manner as the county court or county judge may direct and to superintend and direct it, and when it is done, to report under oath in writing to the court.

(c) When it appears and the county court is satisfied that the contract has been faithfully performed, the county court shall direct the clerk to draw a warrant in favor of the party with whom the contract was made, on the county treasurer, for the amount due on the contract, and the county treasurer shall be directed to pay the amount out of the road fund in the county treasurer's hands.

(d) The county court may expend all or any part of the road fund in opening, constructing, and repairing roads through, by, and under the county highway commission, without reference to contracts.

History. Acts 1871, No. 26, § 69, p. 56; 26, codified as §§ 14-298-101 — 14-298-1893, No. 177, § 8, p. 311; C. & M. Dig., 106, 14-298-107 [repealed], 14-298-108 — § 5496; Pope's Dig., § 7138; A.S.A. 1947, 14-298-117, 14-298-119, 14-298-123, 14-298-124, and 26-79-105.
§ 76-710.

Meaning of "this act". Acts 1871, No.

CASE NOTES

Purchases.

Purchase of traction engine and road grader by county judge and road overseer

was valid. *Patterson v. Collison*, 135 Ark. 105, 204 S.W. 753 (1918).

26-79-106. Interest earned on funds.

After January 1, 1992, all interest earned on county road fund moneys shall be credited to the county road fund and not to the county general fund.

History. Acts 1991, No. 275, § 1.

"This act shall become effective on January 1, 1992."

Effective Dates. Acts 1991, No. 275, § 2, provided:

CHAPTER 80

SCHOOL DISTRICT TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ENABLING ARKANSAS CONSTITUTION, AMENDMENT 74.

SUBCHAPTER

3. AMENDMENT 74 ENABLING ACT OF 2003.
4. AMENDMENT 74 ENABLING ACT OF 2003.

Cross References. School district tax, Ark. Const., Art. 14, § 3.

Publisher's Notes. Because Acts 1997, No. 1300 added subchapter 2, the existing provisions of this chapter have been designated as subchapter 1.

Effective Dates. Acts 1997, No. 1300, § 29: Apr. 10, 1997. Emergency clause provided: "It is found and determined by the General Assembly that Amendment No. 74 to the Arkansas Constitution was adopted by the electors of this state on November 5, 1996; that Amendment No. 74 became effective on adoption and applies to ad valorem property taxes due in 1997; that the tax books of each county will open for collection of taxes in the near future and that local officials and school districts must have direction on procedures and effects of the various actions required. The General Assembly further

finds that Amendment No. 74 requires enactment of legislation to implement the provisions thereof and that this act provides such implementation and should be given effect immediately to accomplish the purposes of Amendment No. 74 in an orderly, effective and efficient manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Equal Protection and School Finance, 26 Ark. L. Rev. 508.

CASE NOTES

Cited: *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 26-80-101. Uniform rate of tax.
- 26-80-102. Approval of tax at elections.
- 26-80-103. [Repealed.]
- 26-80-104. Collection and separation of proceeds.
- 26-80-105. [Repealed.]
- 26-80-106. Use of surplus for other purposes.

SECTION.

- 26-80-107 — 26-80-109. [Repealed.]
- 26-80-110. Dedicated maintenance and operation millage.
- 26-80-111. School districts formed by consolidation, annexation, or merger.

Publisher's Notes. Because Acts 1997, No. 1300 added subchapter 2, the existing

provisions of this chapter have been designated as subchapter 1.

Cross References. Amendment 74 Enabling Act of 2003, § 26-80-401 et seq.

Preambles. Acts 1951, No. 403, contained a preamble which read: "Whereas, the statutes governing the notice for and the holding of school elections contain conflicting and overlapping requirements that result in unnecessary and burdensome costs upon the school districts of Arkansas, and also result in some uncertainty regarding proper procedure, and should be simplified; now therefore . . ."

Effective Dates. Acts 1921, No. 8, § 4: approved Jan. 21, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall be in force from and after its passage."

Acts 1931, No. 169, § 198: approved Mar. 25, 1931. Emergency clause provided: "It is found as a fact that the advent of the automobile, and the great improvement in the roads of the State have worked great changes in the system of administering the public schools of the State, and there is occasion to change the boundaries of many such districts before the end of the current school term, to relieve many of them of pressing indebtedness, to immediately administer to the health of many pupils in the schools, and to distribute State Funds to many of the schools in the near future to prevent some of them from having to close for the lack of funds; therefore, it is necessary that this act take immediate effect for the preservation of public peace, health, and safety; therefore, an emergency is declared and this act shall take effect and be in force immediately after its passage."

Acts 1951, No. 403, § 10: Mar. 26, 1951. Emergency clause provided: "It is hereby ascertained and declared that many school districts of the state now engaged in building programs needed for the instruction and care of the pupils are being delayed because of uncertainties in the present laws governing school elections, and that therefore an emergency exists, and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 58, § 3: Feb. 19, 1959. Emergency clause provided: "It is hereby found and declared by the General Assembly that inequities are resulting from the

fact that in certain cases a school district may embrace territory in two or more counties some of which have raised their property assessments to comply with Act 153 of 1955 and some of which have not thereby resulting in some property owners in district paying taxes upon a greater percentage of the value of their property than others, and that this Act will alleviate such undesirable situation. Therefore, an emergency is hereby declared to exist and this Act being necessary to preserve the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 57, § 6: July 1, 1992.

Acts 1999, No. 1078, § 92: July 1, 2000.

Acts 2003 (2nd Ex. Sess.), No. 28, § 10: Dec. 31, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It is also found that the people must be informed as early as possible the impact of the court's ruling on the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003 (2nd Ex. Sess.), No. 105, § 12: Feb. 10, 2004. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It has also found that the people must be informed as early as possible of the impact of the court's ruling on the property taxes that

they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If

the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Equal Protection and School Finance, 26 Ark. L. Rev. 508.

26-80-101. Uniform rate of tax.

(a) There is established a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real property, personal property, and utility property in the state to be used solely by school districts to which it may be distributed according to law for maintenance and operation of the schools.

(b)(1)(A) The uniform rate of tax shall be assessed and collected in the same manner as other school property taxes, but the net revenues from the uniform rate of tax shall be remitted to the Treasurer of State and distributed by the state to the county treasurer of each county for distribution to the school districts in that county as provided by subsection (c) of this section.

(B) No portion of the revenues from the uniform rate of tax shall be retained by the state but shall be distributed back to the school district from which the revenues were received or to other school districts pursuant to subsection (c) of this section.

(C) No additional fees or charges shall be assessed at the local level for transmission and redistribution of these funds.

(D) The revenues so distributed shall be used by the school districts solely for maintenance and operation of schools.

(2)(A) The Treasurer of State shall establish procedures, forms, and documentation requirements for the certification of net revenues produced by the uniform rate of tax to be deposited with the Treasurer of State and redistributed as provided by law.

(B) Further, the Treasurer of State shall establish procedures, forms, and documentation requirements for the actual deposit and redistribution of the net revenues produced by the uniform rate of tax.

(3) Each county treasurer shall execute an electronic funds transfer agreement with the Treasurer of State to effectuate the contemporaneous transmittal of funds to the Treasurer of State and the redistribution as provided by law of the net revenues produced by the uniform rate of tax.

(4)(A) The Treasurer of State shall process the necessary documentation to certify the amount to be receipted and redistributed to each

county treasurer no more than six (6) times each month, with no interim distributions.

(B) Documentation received and certified on the first, second, third, or fourth Tuesday, or second or third Thursday of each month by the time deadlines established by the Treasurer of State shall be processed for execution of the electronic funds transfer of deposit and redistribution, as provided by law, of the net revenues produced by the uniform rate of tax on the following day. *

(C) When a banking holiday occurs, the Treasurer of State shall notify the county treasurers of the revised deadline, which shall minimize delay in the receipt and redistribution, as provided by law, of the net revenues of the uniform rate of tax.

(5) Each county official involved in the process established by the Treasurer of State for receipt and redistribution of the net revenues of the uniform rate of tax shall take all actions and do all things necessary to ensure that the process established is carried out in an efficient and prudent manner.

(6)(A)(i) It is the intent of the General Assembly to have the collection and distribution of tax revenues modified as little as possible by the process under this section.

(ii) The General Assembly specifically acknowledges that under other law county treasurers distribute revenues monthly on a pro rata basis to the various taxing units with a reconciliation of actual revenues produced by each levy of each taxing unit in the county taking place only in the final settlement produced for each tax year.

(B) The process under this section is not intended to affect the monthly distribution or final settlement process except for the process set out in subdivision (b)(4) of this section.

(c) For each school year, each county treasurer shall remit the net revenues from the uniform rate of tax to each local school district from which the revenues were derived.

History. Acts 1931, No. 169, § 130; Pope's Dig., § 11572; A.S.A. 1947, § 80-601; Acts 1997, No. 1300, § 6; 1999, No. 787, § 1; 2003 (2nd Ex. Sess.), No. 28, § 6; 2003 (2nd Ex. Sess.), No. 105, § 8; 2007, No. 343, § 1.

A.C.R.C. Notes. As enacted by Acts 1997, No. 1300, § 6, subsection (c) began: "For the 1996-97 school year and each year thereafter".

Amendments. The 2003 (2nd Ex.

Sess.) amendment by identical acts Nos. 28 and 105 deleted (c)(2) and (3); and deleted "unless otherwise specified in subdivisions (c)(2) and (c)(3) of this section" from the end of (c).

The 2007 amendment substituted "six (6)" for "four (4)" in (b)(4)(A); inserted "or second or third Thursday" in (b)(4)(B); and made a minor punctuation change.

Cross References. School district tax, Ark. Const., Art. 14, § 3.

26-80-102. Approval of tax at elections.

(a)(1) In addition to the uniform rate of tax as provided in § 26-80-101, school districts are authorized to levy by a vote of the qualified electors respectively thereof an annual ad valorem property tax on the assessed value of taxable real, personal, and utility property for the

maintenance and operation of schools and the retirement of indebtedness.

(2) The board of directors of each school district shall prepare, approve, and make public not less than sixty (60) days in advance of the annual school election a proposed budget of expenditures deemed necessary to provide for the foregoing purposes, together with a rate of tax levy sufficient to provide the funds therefor, including the rate under any continuing levy for the retirement of indebtedness.

(3)(A) The board of directors shall submit the tax at the annual school election or at such other time as may be provided by law. If a majority of the qualified voters in the school district voting in the school election approve the rate of tax proposed by the board of directors, then the tax at the rate approved shall be collected as provided by law. In the event a majority of the qualified electors voting in the school election disapprove the proposed rate of tax, then the tax shall be collected at the rate approved at the last preceding school election.

(B) However, if the rate approved has been modified pursuant to the uniform rate of tax calculated by the Department of Education, then the tax shall be collected at the modified rate until another rate is approved.

(b) No tax levied pursuant to subsection (a) of this section shall be appropriated to any other district than that for which it is levied.

History. Acts 1931, No. 169, § 139; Pope's Dig., § 11581; A.S.A. 1947, § 80-602; Acts 1997, No. 1300, § 7.

Cross References. Approval of tax rate by electors, Ark. Const., Art. 14, § 3.

CASE NOTES

ANALYSIS

Annexation of Districts.
Certification of Millage.
Election Ballot.

Annexation of Districts.

Where two small districts, whose electors had exercised their right and fixed the rate of taxation for all property within the districts, were annexed to an existing school district in which other electors had voted for a somewhat higher millage rate, the quorum court's decision to levy school taxes at the rate approved by the electors in each district during the year of merger was reasonable and just; however, the tax rate for years subsequent would be determined at the annual school district elections, in which all the property owners would be entitled to vote. *Atkinson v. El Dorado School Dist.*, 267 Ark. 212, 590 S.W.2d 5 (1979).

Certification of Millage.

Certificate from board of education to quorum court showing amount of millage voted as "18" was not void for uncertainty, since such "18" could not represent dollars or cents but mills. *London v. Montgomery*, 211 Ark. 434, 201 S.W.2d 760 (1947). See also *Seligson v. Seegar*, 211 Ark. 871, 202 S.W.2d 970 (1947).

Election Ballot.

School directors are not only charged with the constitutional responsibility of ascertaining the amount of money needed for the construction and operation of schools and the rate of taxation necessary to raise the amount needed; they have the added statutory responsibility of seeing that the necessary rate is placed on the election ballot to be approved or rejected by the voters. *Henry v. Stuart*, 251 Ark. 415, 473 S.W.2d 165 (1971).

Cited: Altus-Denning School Dist. No.

1 v. Franklin County, 568 F. Supp. 95 (W.D. Ark. 1983); Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. #1, 971 F.2d 160 (8th Cir. 1992).

26-80-103. [Repealed.]

Publisher's Notes. This section, concerning continuing building fund tax of varying rates, was repealed by Acts 1997, No. 1300, § 8. The section was derived from Acts 1951, No. 403, § 8; A.S.A. 1947, § 80-608.

26-80-104. Collection and separation of proceeds.

(a) Rates voted for different funds of district school tax shall not be shown separately on the county tax books but shall be shown there only in the total amount of district tax to be levied.

(b) The school tax shall be collected in the same manner as county taxes are collected, at the same time and by the same person, and shall be paid into the county treasury.

(c) The county treasurer shall separate the proceeds of these taxes into the several funds as is provided by law or the school directors as is authorized by law.

(d)(1) The county treasurer in the collecting county shall separate the proceeds from the uniform rate of tax by multiplying the ratio of the uniform rate of tax divided by the total rate of tax for the school district multiplied by the net revenues from the total rate of tax for the school district.

(2) These proceeds shall be remitted to the Treasurer of State and shall be redistributed to the county treasurer as provided by § 26-80-101.

History. Acts 1931, No. 169, § 140; 603; Acts 1997, No. 1300, § 9; 1999, No. Pope's Dig., § 11582; A.S.A. 1947, § 80-1078, § 89.

CASE NOTES

Levy of Tax.

No levy of school taxes was shown where the records of the county court showed that the court ascertained that the school district voted a tax of five mills for school purposes, but did not show that

the court proceeded to levy the tax. *Alexander v. Capps*, 100 Ark. 488, 140 S.W. 722 (1911) (decision under prior law).

Cited: *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

26-80-105. [Repealed.]

Publisher's Notes. This section, concerning extension and collection of assessed real property taxes, was repealed by Acts 1997, No. 1300, § 10. The section was derived from Acts 1959, No. 58, § 1; A.S.A. 1947, § 80-609.

26-80-106. Use of surplus for other purposes.

Because of consolidations of school districts and for other reasons, the debt service millage voted by a school district for the payment of its outstanding indebtedness frequently provided a substantial surplus

over the amount of the annual principal and interest requirements. This surplus may be used by the district for the purpose of paying the principal and interest of subsequent indebtedness incurred by it and may be pledged for that purpose or any other school purpose, provided that the district is in compliance with the uniform rate of tax.

History. Acts 1951, No. 403, § 7; A.S.A. 1947, § 80-607; Acts 1997, No. 1300, § 11.

26-80-107 — 26-80-109. [Repealed.]

Publisher's Notes. These sections, concerning raising of additional voluntary taxes, settlement of voluntary taxes and refunds, and enforcement of voluntary tax pledges, were repealed by Acts 1997, No. 1300, §§ 12-14. They were derived from the following sources:

26-80-107. Acts 1921, No. 8, § 1; Pope's Dig., § 11775; A.S.A. 1947, § 80-604.

26-80-108. Acts 1921, No. 8, § 2; Pope's Dig., § 11776; A.S.A. 1947, § 80-605.

26-80-109. Acts 1921, No. 8, § 3; Pope's Dig., § 11777; A.S.A. 1947, § 80-606.

26-80-110. Dedicated maintenance and operation millage.

(a)(1) Upon the approval of a majority of the qualified voters in the school district voting in the school election, the board of directors of each local school district may designate as dedicated maintenance and operation millage some of the school district's additional maintenance and operation millage that exceeds the uniform rate of tax.

(2) The approved tax shall be assessed, levied, and collected as provided by law for other school taxes.

(b) Any funds received from the collection of a dedicated maintenance and operations tax shall be used only for maintenance and operation purposes specifically approved by the majority of the qualified voters of the school district voting in the school election and for no other purposes than those that were stated on the ballot.

(c) Any levy of a dedicated maintenance and operation millage shall be limited as set forth in subsection (b) of this section and shall not exceed three (3) mills.

(d) Any levy of a dedicated maintenance and operation millage must be specified on the ballot, and that specification must list the purpose for which the dedicated maintenance and operation millage is levied.

(e) Dedicated maintenance and operation millage may not be used by a school district to comply with the uniform rate of tax levy.

History. Acts 1989, No. 171, §§ 1-3; 1991, No. 839, § 1; 1993, No. 1276, § 1; 1995, No. 917, § 9; 1997, No. 1300, § 15; 2003 (2nd Ex. Sess.), No. 28, § 7; 2003 (2nd Ex. Sess.), No. 105, § 9.

A.C.R.C. Notes. Pursuant to § 1-2-207, subsection (a) of this section is set out as amended by Acts 2003 (2nd Ex. Sess.), No. 105, § 9. Subsection (a) of this section was also amended by Acts 2003 (2nd Ex.

Sess.), No. 28, § 7, but that act did not repeal the former subdivision (a)(3). Former subdivision (a)(3) read: "The approved tax may be considered part of the school district's uniform rate of tax as calculated by the State Department of Education under Arkansas Constitution, Amendment 74."

Amendments. The 2003 (2nd Ex. Sess.) amendment by No. 28 rewrote (a)(1)

and (b); deleted (c); redesignated former (d) and (e) as present (c) and (d); rewrote present (c); and added present (e).

The 2003 (2nd Ex. Sess.) amendment by No. 105 rewrote (a)(1) and (b); deleted

(a)(3) and (c); redesignated former (d) and (e) as present (c) and (d); rewrote present (c); and added present (e).

26-80-111. School districts formed by consolidation, annexation, or merger.

(a)(1) When a new school district is created from all or parts of two (2) or more districts or a school district is dissolved and all or part of the area of the dissolved school district is annexed to or consolidated with an existing school district, the board of directors of the resulting school district shall submit to the electors of the school district at the next annual school election a proposed tax millage rate for the school district.

(2) If the proposed millage rate is approved by the electors of the school district, it shall be the rate for the school district, provided that the rate complies with the uniform rate of tax.

(b)(1) If a new school district is created from all or parts of two (2) or more school districts or a school district is dissolved and all or part of the area of the dissolved school district is annexed to or consolidated with an existing school district and if the electors have failed to approve a proposed millage rate at a school election, then the tax shall be collected at the rate approved in the last preceding school election.

(2) However, if the rate last approved has been modified pursuant to Arkansas Constitution, Article 14, § 3(b), or Arkansas Constitution, Article 14, § 3(c)(2), then the tax shall be collected at the modified rate until another rate is approved.

History. Acts 1992 (1st Ex. Sess.), No. 57, § 1; 1997, No. 1300, § 16; 2003 (2nd Ex. Sess.), No. 28, § 8; 2003 (2nd Ex. Sess.), No. 105, § 10.

A.C.R.C. Notes. As enacted by Acts 2003 (2nd Ex. Sess.), No. 105, § 10, the references to the Arkansas Constitution in subdivision (b)(2) of this section read “Arkansas Constitution, Amendment 74, subsection (b) or subdivision (c)(2)”. Amendment 74, § 1, rewrote Arkansas Constitution, Article 14, § 3, to include, among other things, a subsection (b) and a subdivision (c)(2).

Publisher’s Notes. Former § 26-80-111, concerning consolidated school districts, was repealed by Acts 1992 (1st Ex. Sess.), No. 57, § 5 and No. 62, § 4. The section was derived from Acts 1989, No. 641, § 1.

Amendments. The 2003 (2nd Ex. Sess.) amendment by identical acts Nos.

28 and 105 added (b)(2); and, in (b)(1), substituted “a school election ... rate is approved” for “an annual school election, then the millage rate for the district shall be the millage rate levied, at the last school election prior to the consolidation, annexation or merger in the district which had the highest average daily membership during the school year preceding the consolidation, annexation, or merger, provided such rate complies with the uniform rate of tax.”

Cross References. Consolidation, annexation, or merger of school districts, § 6-14-122.

Effective Dates. Acts 1992 (1st Ex. Sess.), No. 57, § 2 provided:

“The provisions of this act shall be applicable with respect to millages to be levied in 1992 for collection in 1993, and thereafter.”

SUBCHAPTER 2 — ENABLING ARKANSAS CONSTITUTION, AMENDMENT 74

SECTION.

26-80-201 — 26-80-207. [Repealed.]

26-80-201 — 26-80-207. [Repealed.]

Publisher's Notes. This subchapter, concerning the Amendment No. 74 Enabling Act of 1997, was repealed by Acts 2003 (2nd Ex. Sess.), No. 28, § 9 and No. 105, § 11. The subchapter derived from the following sources:

26-80-201. Acts 1997, No. 1300, § 5; 1999, No. 1549, § 24; 2001, No. 1202, § 1.

26-80-202. Acts 1997, No. 1300, § 1.

26-80-203. Acts 1997, No. 1300, § 2.

26-80-204. Acts 1997, No. 1300, § 3; 1999, No. 1549, § 25; 2001, No. 1202, § 2.

26-80-205. Acts 1997, No. 1300, § 4; 1999, No. 1549, § 26.

26-80-206. Acts 1997, No. 1300, § 21; 1999, No. 1549, § 27; 2001, No. 1202, § 3.

26-80-207. Acts 1997, No. 1300, § 25.

SUBCHAPTER 3 — AMENDMENT 74 ENABLING ACT OF 2003

SECTION.

26-80-301 — 26-80-306. [Repealed.]

26-80-301 — 26-80-306. [Repealed.]

Publisher's Notes. Acts 2003 (2nd Ex. Sess.), No. 28, § 1, enacted this subchapter, §§ 26-80-301 — 26-80-306, however

Acts 2003 (2nd Ex. Sess.), No. 105, § 1, subsequently repealed this subchapter so that its provisions never became effective.

SUBCHAPTER 4 — AMENDMENT 74 ENABLING ACT OF 2003

SECTION.

26-80-401. Title.

26-80-402. Definitions.

26-80-403. Establishment of compliance.

26-80-404. Calculation of compliance with the uniform rate of tax.

SECTION.

26-80-405. Interrelationship between Amendments 59 and 74.

26-80-406. Penalties.

Effective Dates. Acts 2003 (2nd Ex. Sess.), No. 105, § 12: Feb. 10, 2004. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court has declared that the current method that the state uses to determine compliance with Amendment 74 to be unconstitutional and has instructed the General Assembly to take action before the termination of the court's stay of its mandate. It has also found that the people must be informed as early as possible of the impact of the court's ruling on

the property taxes that they pay for education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-80-401. Title.

This subchapter shall be known and may be cited as the "Amendment 74 Enabling Act of 2003".

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

26-80-402. Definitions.

As used in this subchapter and § 26-80-101 et seq.:

(1) "Additional maintenance and operation millage" means millage levied by the electors of a local school district for maintenance and operation in excess of those required by the uniform rate of tax;

(2) "Debt service millage" means the total number of mills voted by the electors of a school district to be pledged as security for the retirement of bonded indebtedness;

(3) "Dedicated maintenance and operation millage" means millage levied by the electors of a local school district and used for those purposes set forth under § 26-80-110;

(4) "Maintenance and operation millage" means millage levied by the electors of a local school district for the maintenance and operation of the school district;

(5) "Millage rate" means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of § 14-14-904;

(6)(A) "Net revenues" means actual revenues from taxes due and payable after January 1, 1997, rounded to the nearest hundredth minus any commission fees authorized by law to be collected or withheld for later distribution by the county offices.

(B) No additional fees shall be charged for transmittal or redistribution of funds by any county or state office in carrying out the procedures established to comply with the requirements of Arkansas Constitution, Amendment 74; and

(7)(A) "Uniform rate of tax" means a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real property, personal property, and utility property in the state to be used solely for maintenance and operation of the schools.

(B)(i) In calculating compliance with the uniform rate of tax imposed by Arkansas Constitution, Article 14, § 3, as amended by Arkansas Constitution, Amendments 11, 40, and 74, only those mills voted for maintenance and operation shall be used in the calculation.

(ii) Dedicated maintenance and operation millage shall not be included in the calculation.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

26-80-403. Establishment of compliance.

Compliance with the uniform rate of tax shall be established by the Department of Education in coordination with the Assessment Coordination Department.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

26-80-404. Calculation of compliance with the uniform rate of tax.

(a)(1) Within thirty (30) days of February 10, 2004, the Commissioner of Education shall certify to each school district whether or not that school district is currently in compliance with the uniform rate of tax.

(2)(A) Compliance shall be determined by analyzing the millage rate levied for maintenance and operation millage from the most recent school election in which the ad valorem tax rate was voted upon.

(B) If the millage rate is equal to or greater than twenty-five (25) mills, then the school district shall be deemed to be in compliance with Arkansas Constitution, Amendment 74.

(b)(1) Within thirty (30) days of February 10, 2004, the commissioner shall certify to each quorum court whether or not the school districts in the quorum court's jurisdiction are in compliance with the uniform rate of tax.

(2) The calculation of compliance under this subsection shall be the same as the calculation explicated in subdivision (a)(2) of this section.

(c) On or before October 1, 2004, and each year thereafter, the Department of Education, in conjunction with the Assessment Coordination Department, shall monitor compliance with the uniform rate of tax.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

26-80-405. Interrelationship between Amendments 59 and 74.

(a) Pursuant to the application of Arkansas Constitution, Amendment 74, to the rollback provisions of Arkansas Constitution, Amendment 59, for millage rates levied by the various school districts within the county, the multiplier that is used to reduce the millage which is determined in item number six (6) of the Base Year Millage Rollback Computation and Certification Form under § 26-26-404(d) shall not be used in item number seven (7) of the Base Year Millage Rollback Computation and Certification Form under § 26-26-404(d) to calculate the rollback of the uniform rate of tax.

(b) Under § 26-26-404(d), a multiplier of one (1) shall be applied to the uniform rate of tax, and the calculated multiplier shall apply to all other millage above the uniform rate of tax.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

26-80-406. Penalties.

(a)(1) Upon the refusal or failure of any state officer to perform any duty imposed upon him or her under the provisions of this subchapter, § 26-80-101 et seq., and Arkansas Constitution, Amendment 74, the Attorney General shall institute mandamus proceedings in a court of proper jurisdiction to compel the state officer to perform his or her duties.

(2) Upon the refusal or failure of any county or school district officer to perform any duty imposed upon him or her under the provisions of this subchapter, § 26-80-101 et seq., and Arkansas Constitution, Amendment 74, the prosecuting attorney of the county including the school district shall institute mandamus proceedings in a court of proper jurisdiction to compel the county or school district officer to perform his or her duties.

(b) Any officer who neglects, fails, or refuses to comply with a writ of mandamus obtained pursuant to subsection (a) of this section, shall be subject to removal from office and liable on his or her official bond for the neglect, failure, or refusal to comply with the writ of mandamus.

History. Acts 2003 (2nd Ex. Sess.), No. 105, § 2.

CHAPTER 81

MULTICOUNTY AIRPORT AND RIVERPORT FINANCING ACT

SECTION.

- 26-81-101. Title.
- 26-81-102. Applicability to other laws.
- 26-81-103. Sales and use tax.
- 26-81-104. Amount of tax — Period of tax.
- 26-81-105. Voter approval by election.
- 26-81-106. Election results — Challenge — Effective date.

SECTION.

- 26-81-107. Record of collections — Deposit with the Treasurer of State.
- 26-81-108. Distribution of tax levied.
- 26-81-109. Rules and regulations.
- 26-81-110. Combined tax reports.

Cross References. Establishment of authorities, § 14-362-103.

General purposes of authority, § 14-185-108.

Effective Dates. Acts 1991, No. 738, § 14: Mar. 25, 1991. Emergency clause provided: "It has been found and it is hereby declared that certain Projects (as defined herein) presently await funding by the authority set forth in this act.

Therefore, an emergency is declared, and this act, being necessary for the preservation of the public peace, health, and safety, shall be in force upon its passage and approval."

Acts 1997, No. 1176, § 20: Jan. 1, 1998.

Acts 1999, No. 1137, § 12: Apr. 6, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions

of Act 1176 of 1997 were intended to encourage the establishment of uniform definitions of the term 'single transaction' in connection with the levy and collection of local sales and use taxes. However, since the procedures established by the provisions of Act 1176 have caused confusion and have resulted in inconsistent applications of the procedures for adoption of local sales and use taxes, the interests of a number of cities and counties who have otherwise complied fully with the provisions of Arkansas law may be prejudiced. This is a result never intended by the General Assembly and which could result in financial hardships and the reduction of services provided by Arkansas cities and counties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1273, § 88, as amended by Acts 2005, No. 2008, § 1, and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies

were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

Acts 2007, No. 166, § 9: Feb. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly that the current procedure for revenue distribution to the regional airport beneficiaries is cumbersome and inefficient; that the regional airport beneficiaries of the funds levied under the Regional Airport Act are suffering material adverse consequences under current procedures; and that accelerated receipt of those funds is appropriate. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

26-81-101. Title.

This chapter shall be known as the “Multicounty Airport and Riverport Financing Act”.

History. Acts 1991, No. 738, § 1.

26-81-102. Applicability to other laws.

(a) This chapter is intended to supplement existing laws and to authorize the levy of the tax authorized hereby without resort to or reliance upon any other law.

(b) Any county which is authorized to levy a tax under this chapter may levy such tax without regard to whether such county, or any municipality located therein, has in effect a sales and use tax or taxes.

History. Acts 1991, No. 738, § 9.

26-81-103. Sales and use tax.

Any county in the State of Arkansas may levy a sales and use tax, as described and set forth herein, for the purpose of providing funds for the acquisition, construction, and equipping of properties, real, personal or mixed, tangible or intangible, to constitute all or a part of any airport or riverport owned and operated by such county, and by one (1) or more other counties jointly or by a metropolitan port authority, pursuant to the Metropolitan Port Authority Act of 1961, § 14-185-101 et seq., a regional airport commission, as set forth in the Regional Airport Act, § 14-362-101 et seq., or other instrumentality of such counties and for the other purposes set forth herein (the “project”).

History. Acts 1991, No. 738, § 2.

26-81-104. Amount of tax — Period of tax.

(a)(1) Any tax levied pursuant to the authority of this chapter shall be a tax equal to one percent (1%) on the sales price on items of personal property and services sold or to be used in the levying county to the extent of and subject to the exemptions with respect to the gross receipts tax and compensating use tax as set forth in the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq. and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., respectively.

(2)(A) Any tax levied pursuant to this chapter shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from the sale of a:

(i) Motor vehicle;

- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or
- (vi) Mobile home.

(B) A vendor shall be responsible for collecting and remitting the tax only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from the sale of a:

- (i) Motor vehicle;
- (ii) Aircraft;
- (iii) Watercraft;
- (iv) Modular home;
- (v) Manufactured home; or
- (vi) Mobile home.

(C) A vendor collecting, reporting, and remitting the county sales or use taxes shall show county taxes as a separate entry on the tax report form.

(b) The tax shall be levied by ordinance of the quorum court of the county.

(c) Any tax levied pursuant to this chapter shall be for a period of not longer than four (4) years.

History. Acts 1991, No. 738, §§ 3, 4, 8; 1997, No. 1176, § 17; 1999, No. 1137, § 6; 2003, No. 1273, § 71.

Amendments. The 2003 amendment rewrote this section.

Effective Dates. Acts 2003, No. 1273, § 71: Jan. 1, 2006.

Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the

agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes

necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1,

2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Taxation, Sales and Use Tax, 26 Legislation, 2003 Arkansas General As- U. Ark. Little Rock L. Rev. 498.

26-81-105. Voter approval by election.

(a)(1) No ordinance shall be enacted by a quorum court levying a tax under this chapter until a majority of the qualified electors of the county voting on the question shall have approved the levy of the tax at an election called for that purpose and conducted in accordance with the general election laws.

(2) Any such election shall be called by ordinance of the quorum court of the levying county.

(b) The ballot title for the election shall include the expiration date for the tax, and any tax levied pursuant to this chapter shall cease upon the expiration date.

(c) The ballot title for the election shall identify the project, and the ballot shall specify whether the levy of the tax is contingent upon the levy of sales and use tax pursuant to this chapter by any other county or counties.

History. Acts 1991, No. 738, § 5.

26-81-106. Election results — Challenge — Effective date.

(a)(1) Upon certification of the election results, the county judge shall issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county.

(2) The county judge shall notify the Director of the Department of Finance and Administration of the results after publication of the proclamation has occurred and ninety (90) days before the effective date of the tax.

(3)(A) If no election challenge is timely filed, there shall be levied, effective on the first day of the first month of the calendar quarter after the expiration of the thirty-day challenge period and after a minimum of sixty (60) days' notice by the director to sellers, a one percent (1%) tax on the gross receipts from the sale at retail within the county on all items that are subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and an excise tax on the storage, use, or consumption within the county of tangible personal property and services purchased, leased, or rented from any retailer outside the state for storage, use, or other consumption in the county, at a rate of one percent (1%) of the sale price of the property or

services or, in the case of leases or rentals, of the lease or rental price, the rate of the use tax to correspond to the rate of the sales tax portion of the tax.

(B) The use tax portion of the local sales and use tax shall be collected according to the terms of the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(b)(1) Any person desiring to challenge the results of the election as published in the proclamation shall file the challenge in the circuit court of the county within thirty (30) days after the date of publication of the proclamation.

(2)(A) In the event of an election challenge, the tax shall be collected as prescribed in subdivision (a)(2) of this section unless enjoined by court order.

(B) A hearing involving such litigation shall be advanced on the docket of the court and disposed of at the earliest feasible time.

History. Acts 1991, No. 738, § 6; 1993, No. 266, § 7; 2003, No. 1273, § 72.

Amendments. The 2003 amendment inserted present (a)(2); redesignated former (a)(2) as (a)(3); in present (a)(3), substituted "month of the calendar quarter after" for "calendar month subsequent to," inserted "and after a minimum of sixty (60) days' notice by the director to sellers," inserted "and services," inserted "or services," and made stylistic changes.

Effective Dates. Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the agreement, the agreement will become effective unless a specific effective date is otherwise given.

These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state's laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state's proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Taxation, Sales and Use Tax, 26
 Legislation, 2003 Arkansas General As- U. Ark. Little Rock L. Rev. 498.

26-81-107. Record of collections — Deposit with the Treasurer of State.

(a) The Director of the Department of Finance and Administration shall maintain a record of the total amount of tax collected pursuant to this chapter and other subchapters authorizing county sales and use tax in each county and shall deposit all such revenues with the Treasurer of State.

(b)(1) Upon receipt of the funds, the Treasurer of State shall deduct three percent (3%) of the funds as a charge by the state for its services as specified in this chapter and shall credit the three percent (3%) to the Constitutional Officer's Fund and the State Central Services Fund.

(2) In addition, the Treasurer of State is authorized to retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer of State to:

(A) Make remittances to the county for rebates made by the county for taxes, if any, in excess of amounts specified by the particular county ordinances paid by a taxpayer;

(B) Make refunds for overpayment of the taxes; and

(C) Redeem dishonored checks and drafts received and deposited into the Local Sales and Use Tax Trust Fund.

(c)(1) Except as set forth in subsection (d) of this section, all funds received by the Treasurer of State from the sales tax levied by each county after deducting the three percent (3%) for the Constitutional Officer's Fund and the State Central Services Fund shall be deposited into the Local Sales and Use Tax Trust Fund and shall be credited to the account of the county in which collected.

(2)(A) The Treasurer of State shall transmit monthly to the county treasurer and to the municipal treasurer of each municipality located in a county levying the tax authorized in this chapter its per capita share of the moneys received by the Treasurer of State from the tax levied by the county and credited to the account of the county in the Local Sales and Use Tax Trust Fund.

(B) The county treasurer of any county that has levied a sales and use tax pursuant to this chapter and that rebates taxes paid in excess of a specified amount shall monthly certify to the Treasurer of State the total amount of rebates paid since the preceding certification, and the Treasurer of State shall remit that amount to the county treasurer from the Local Sales and Use Tax Trust Fund.

(d)(1) Except for revenue collected under subdivision (d)(2) of this section, money collected that is derived from a tax on aviation fuel levied by a county where a regional airport as described by the Regional Airport Act, § 14-362-101 et seq., is located shall not be deposited into

the State Treasury but shall be deposited as cash funds by the Treasurer of State into a bank or banks designated by the regional airport, subject to the charges by the state for its services as specified in this section.

(2) Revenue derived from a tax on aviation fuel in effect on December 30, 1987, is not subject to this subsection.

History. Acts 1991, No. 738, § 10; 1997, No. 1176, § 18; 2003, No. 1273, §§ 73, 74; 2007, No. 166, §§ 7, 8.

Amendments. The 2003 amendment deleted “on a single transaction” following “taxpayer” in (b)(1); in (c)(2), substituted “Treasurer of State” for “State Treasurer” four times, deleted “on a single transaction” following “taxes paid”; and made minor stylistic changes.

The 2007 amendment added “Except as...this section” at the beginning of (c)(1); redesignated former (b)(2)(1), (b)(2)(2), and (b)(2)(3) as (b)(2)(A), (b)(2)(B), and (b)(2)(C); and added (d).

Effective Dates. Acts 2003, No. 1273, §§ 73, 74; Jan. 1, 2006.

Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1; Jan. 1, 2008. Effective date clause provided: “Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the

agreement, the agreement will become effective unless a specific effective date is otherwise given. These contingencies were met and the Streamlined Sales and Use Tax Agreement went into effect on October 1, 2005. Pursuant to the Streamlined Sales and Use Tax Agreement, a state may apply to become a party to the Streamlined Sales and Use Tax Agreement by submitting a petition for membership and certificate of compliance to the governing board. The governing board shall then determine if the petitioning state is in compliance with the Streamlined Sales and Use Tax Agreement. A state is in compliance with the Streamlined Sales and Use Tax Agreement if the effect of the state’s laws, rules, regulations, and policies is substantially in compliance with the requirements in the Streamlined Sales and Use Tax Agreement. The petitioning state’s proposed date of entry to the Streamlined Sales and Use Tax Agreement shall be on the first day of a calendar quarter. It is anticipated that Arkansas will become a full member of the Streamlined Sales and Use Tax Governing Board on January 1, 2008. In order to allow the Department of Finance and Administration and local businesses additional time to prepare for the changes necessary as the result of this act, all of the sections in this act will become effective on January 1, 2008. Thus, any section of this act with a specific effective date shall have an effective date of January 1, 2008, and not the specific effective date provided in the introductory language to the section, and when no effective date was listed in the section, then the effective date will also be January 1, 2008.”

26-81-108. Distribution of tax levied.

(a) The collection of any tax levied pursuant to this chapter shall be distributed as follows:

(1) To the county for the acquisition, construction, and equipping of the project, fifty percent (50%) of the tax collections; and

(2) To the county and to each municipality located in the county, proportionately on the basis of population as reflected in the latest federal census, fifty percent (50%) of the tax collections.

(b) Funds received by the counties and municipalities pursuant to the provisions of this chapter, other than those required to be applied to a project, as set forth in subsection (a) of this section may be used by the counties and municipalities for any purpose for which the county general funds or the municipal general funds may be used.

(c)(1) When any tax adopted by a county pursuant to this chapter is terminated, the Director of the Department of Finance and Administration shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year an amount equal to five percent (5%) of the final remittance to the county and municipalities therein at the time of termination of the collection of the tax to:

(A) Cover possible rebates by the county;

(B) Cover refunds for overpayment of taxes; and

(C) Redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund.

(2) After one (1) year has elapsed after the effective date of the abolition of the tax in any county, the director shall transfer the balance in that county's account to the county and municipalities in the county and shall close the account.

(d) The Treasurer of State is authorized to make refunds for overpayment of the tax and to redeem dishonored checks and drafts issued in payment of the tax from the Local Sales and Use Tax Trust Fund.

History. Acts 1991, No. 738, §§ 7, 10.

26-81-109. Rules and regulations.

The Director of the Department of Finance and Administration may promulgate reasonable rules and regulations not inconsistent with the provisions of this chapter to implement the administration, collection, enforcement, and operation of the taxes authorized in this chapter.

History. Acts 1991, No. 738, § 10.

26-81-110. Combined tax reports.

(a)(1) Each vendor who is liable for one (1) or more city sales or use taxes shall report a combined city sales tax and a combined city use tax on his or her sales and use tax report.

(2)(A) The combined city sales tax is equal to the sum of all sales taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(B) The combined city use tax is equal to the sum of all use taxes levied by a city under this subchapter or any other provision of the Arkansas Code.

(3) This subsection only applies to a tax collected by the Director of the Department of Finance and Administration.

(4) This subsection does not apply to tax collected pursuant to § 26-75-502 et seq., which shall continue to be reported separately.

(b)(1) Each vendor who is liable for one (1) or more county sales or use taxes shall report a combined county sales tax and a combined county use tax on his or her sales and use tax report.

(2) The combined county sales tax is equal to the sum of all sales taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(3) The combined county use tax is equal to the sum of all use taxes levied by a county under this subchapter or any other provision of the Arkansas Code.

(4) This subsection only applies to a tax collected by the director.

History. Acts 1997, No. 1176, § 19; 1999, No. 1137, § 7; 2003, No. 1273, § 75.

Publisher's Notes. Acts 1999, No. 1137, § 8, provided: "It is the express intent of the General Assembly that this act be applied retroactively to any city or county ordinance adopted after January 1, 1998, as it is remedial and procedural in nature."

Amendments. The 2003 amendment deleted former (a); redesignated former (b)(1) as (a) and former (c) as (b); and added gender neutral language throughout.

Effective Dates. Acts 2003, No. 1273, § 75: Jan. 1, 2006.

Acts 2003, No. 1273, § 88 as amended by Acts 2005, No. 2008, § 1 and Acts 2007, No. 180, § 1: Jan. 1, 2008. Effective date clause provided: "Effective date. It is found and determined by the Eighty-fourth General Assembly that the Streamlined Sales and Use Tax Agreement is necessary in order to stop the loss of sales tax revenue due to the rapid growth of internet sales, to level the playing field between local businesses and out-of-state businesses, and to negate the undue burden on interstate commerce; and that this act is necessary in order for Arkansas to be in compliance with the Streamlined Sales and Use Tax Agreement. Under the Streamlined Sales and Use Tax Agreement, when at least ten (10) states comprising at least twenty percent (20%) of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the

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State land sales.

Invalid donation, §26-37-207.

State land sales.

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Domestic.

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Duly licensed distributor.

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Employer.

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Qualified museums, §26-53-146.

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Farming.

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Fiduciary.

Income taxes, §26-5-102.

State tax procedure, §26-18-104.

Finance lease.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

DEFINED TERMS —Cont'd**Financial institution.**

- Collection of real and personal property taxes, §26-35-606.
- Motion picture incentives, §26-4-203.
- State taxes, §26-50-101.
- Taxation, §§26-26-1502, 26-51-1402.

Fire trucks.

- Tax refund for motor fuels and distillate special fuels, §§26-55-1301, 26-56-701.

First receiver.

- Special motor fuels taxes, §26-56-102.

First sale.

- Tobacco products tax, §26-57-203.

Food and food ingredients.

- Compensating tax, §§26-53-102, 26-53-145.
- Gross receipts tax, §§26-52-103, 26-52-317.

Foreign.

- Income taxes, §26-51-102.

Foreign country.

- Income taxes, §26-51-102.

Former owner.

- Tax sales, §26-37-205.

Fringe school districts.

- Implementation of millage rollback, §26-26-408.

Fuels.

- Motor fuel tax.
- Shipments of motor fuels, §26-55-601.

Gallon.

- Special motor fuels taxes, §26-56-102.

Gallon equivalent.

- Alternative fuels tax, §26-62-102.

Gaming winnings.

- Income tax, §26-51-1302.

Gas produced from biomass.

- Gross receipts tax, §26-52-429.

General tobacco products vendor.

- Tobacco products tax, §26-57-203.

Gift enterprises.

- Municipal taxation, §26-77-202.

Gross estate.

- Estate taxes, §26-59-102.

Gross income.

- Income taxes, §26-51-404.

Gross proceeds.

- Gross receipts tax, §26-52-103.
- Special excise taxes, §26-63-102.

Gross receipts.

- Gross receipts tax, §26-52-103.
- Special excise taxes, §26-63-102.

Gross receipts tax.

- Multistate tax compact, §26-5-101.

DEFINED TERMS —Cont'd**Gross rents.**

- Financial institution taxes, §26-51-1402.

Gross sales.

- Tobacco products tax, §26-57-203.

Handicapped person.

- Federally funded housing, §26-26-1206.

Hawker.

- County privilege and license taxes, §26-76-101.

Head of household.

- Income tax, §26-51-301.

Heavy equipment.

- Gross receipts tax, §26-52-318.

Home scrap.

- Tax credit for waste reduction, reuse or recycling equipment, §26-51-506.

Home service provider.

- Gross receipts tax, §26-52-315.

Homestead.

- Property taxes, §§26-26-1118, 26-26-1122.

Housing.

- Federally funded housing for elderly or individuals with disabilities, §26-26-1206.

Human organ.

- Gift of life act, §26-51-2103.

IFTA carrier.

- Alternative fuels tax, §26-62-102.

Importing.

- Motor fuel tax, §26-55-202.
- Special motor fuels taxes, §26-56-102.

Income tax.

- Multistate tax compact, §26-5-101.

Income year.

- Income taxes, §26-51-102.
- Withholding, §26-51-902.

Individual.

- Income tax.
- Credit for support of a child with developmental disability, §26-51-503.

- Income taxes, §26-51-102.

- State tax procedure, §26-18-104.

Interstate user.

- Alternative fuels tax, §26-62-102.
- Special motor fuels taxes, §26-56-102.

In this state.

- Compensating tax, §26-53-102.

Invested.

- Gross receipts tax.
- Steel mill tax incentives, §26-52-911.
- Income taxes.
- Steel mill tax incentives, §§26-51-1201, 26-51-1211.

DEFINED TERMS —Cont'd**Investment.**

Gross receipts tax.

Steel mill tax incentives, §26-52-901.

Investment in bonds.

Taxation, §26-1-101.

Investment in stocks.

Taxation, §26-1-101.

Land leveling.

Water resource conservation and development, §26-51-1003.

Landscaping.

Gross receipts tax, §26-52-301.

Lawn care.

Gross receipts tax, §26-52-301.

Lease.

County sales and use tax for capital improvements, §26-74-203.

County sales tax for capital improvements, §26-74-303.

Gross receipts tax, §26-52-103.

Municipal sales and use tax for capital improvements, §26-75-203.

Municipal sales tax for capital improvements, §26-75-303.

Special excise taxes, §26-63-102.

Licensed.

Tobacco products tax, §26-57-203.

Licensee.

Tobacco settlement agreement enforcement, §26-57-1302.

Liquefied gas special fuels.

Special motor fuels taxes, §26-56-102.

Livestock.

Gross receipts tax, §26-52-439.

Livestock reproduction equipment.

Gross receipts tax, §26-52-439.

Livestock reproduction substance.

Gross receipts tax, §26-52-439.

Load and leave.

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Loan.

Financial institution taxes, §26-51-1402.

Loan secured by real property.

Financial institution taxes, §26-51-1402.

Local board.

Community colleges.

Countywide sales and use tax for capital improvements, §26-74-601.

Local government.

Taxation, §26-73-102.

Lodging.

Municipal gross receipts tax, §26-75-701.

DEFINED TERMS —Cont'd**Long-term rental.**

Special excise taxes, §26-63-102.

Lower-tier pass-through entity.

Income tax withholding, §26-51-919.

Machinery and equipment.

Gross receipts tax.

Timber harvesting equipment, §26-52-431.

Income taxes.

Donation or sales of equipment to educational institutions, §26-51-1101.

Machinery purchased to replace existing machinery.

Compensating tax, §26-53-114.

Gross receipts tax, §26-52-402.

Maintenance.

Income taxes.

Tax credit for waste reduction, reuse or recycling equipment, §26-51-506.

Maintenance and operation millage.

Amendment 74 enabling act of 2003, §26-80-402.

Manufactured home.

Gross receipts tax, §26-52-801.

Manufacturer.

Tobacco products tax, §26-57-203.

Manufacturing.

Gross receipts tax, §26-52-402.

Income tax credits, §26-51-505.

Manufacturing of tires.

Gross receipts tax, §26-52-441.

Master settlement agreement, §26-57-260.

Tobacco settlement agreement enforcement, §26-57-1302.

Member.

Income tax withholding.

Pass-through entities, §26-51-919.

Merchant discount.

Financial institution taxes, §26-51-1402.

Milk.

Soft drink tax, §26-57-902.

Millage rate.

Amendment 74 enabling act of 2003, §26-80-402.

Miscellaneous itemized deductions.

Income taxes, §26-51-437.

Mobile home.

Gross receipts tax, §26-52-801.

Mobile telecommunications service.

Gross receipts tax, §26-52-315.

Mobility-enhancing equipment.

Gross receipts tax, §26-52-433.

DEFINED TERMS —Cont'd**Model 1 seller.**

Streamlined sales tax administrative act, §26-21-103.

Model 2 seller.

Streamlined sales tax administrative act, §26-21-103.

Model 3 seller.

Streamlined sales tax administrative act, §26-21-103.

Modernization.

Manufacturer's investment tax credit, §26-51-2002.

Sales and use taxes.

Economic investment tax credit, §26-52-702.

Modular home.

Gross receipts tax, §26-52-801.

Money.

Taxation, §26-1-101.

Motion picture production company.

Tax incentives, §26-4-203.

Motor fuel.

Motor fuel tax, §26-55-202.

Motor vehicle.

Alternative fuels tax, §26-62-102.

Gross receipts tax, §26-52-441.

Income taxes.

Tax credit for waste reduction, reuse or recycling equipment, §26-51-506.

Motor fuel tax, §26-55-202.

Special excise taxes, §§26-63-102, 26-63-301.

Special motor fuels taxes, §26-56-102.

Municipality.

Taxation, §26-73-102.

National bank.

State taxes, §26-50-101.

Taxation, §26-26-1502.

Natural fruit juice.

Soft drink tax, §26-57-902.

Natural gas fuels.

Alternative fuels tax, §26-62-102.

Natural resources.

Severance taxes, §26-58-101.

Natural vegetable juice.

Soft drink tax, §26-57-902.

Net estate.

Estate taxes, §26-59-102.

Net income.

Income taxes, §26-51-403.

Net revenues.

Amendment 74 enabling act of 2003, §26-80-402.

DEFINED TERMS —Cont'd**New.**

Income taxes.

Donations or sales of equipment to educational institutions, §26-51-1101.

New construction.

Property taxes, §26-26-1122.

New employees.

Income taxes, §26-51-505.

Newly discovered real property.

Property taxes, §26-26-1122.

Non-alcoholic beverage.

Soft drink tax, §26-57-902.

Nonbusiness income.

Income taxes.

Division of income for tax purposes, §26-51-701.

Multistate tax compact, §26-5-101.

Noncompliant taxpayer.

State tax procedure, §26-18-104.

Nonparticipating manufacturer.

Tobacco settlement agreement enforcement, §26-57-1302.

Nonprofit corporation or association.

Federally funded housing for elderly or individuals with disabilities, §26-26-1206.

Nonprofit organization.

Compensating tax.

Qualified museums, §26-53-146.

Gross receipts tax.

Qualified museums, §26-52-440.

Nonresident.

Estate taxes, §26-59-102.

Income taxes, §26-51-102.

Income tax withholding.

Pass-through entities, §26-51-919.

Novelty.

Tax on coin-operated amusements, §26-57-402.

Oath.

Taxation, §26-1-101.

Office sector.

Sales and use taxes.

Economic investment tax credit, §26-52-702.

Off-road consumer.

Special motor fuels taxes, §26-56-102.

Off-road equipment.

Gross receipts tax.

Timber harvesting equipment, §26-52-431.

Oil producer.

Severance tax credits for certain oil and gas producers, §26-58-201.

DEFINED TERMS —Cont'd**Operator.**

Vending devices decals, §26-57-1203.

Other base.

Soft drink tax, §26-57-902.

Overpayment.

State tax procedure, §26-18-104.

Owner.

Vending devices decals, §26-57-1203.

Owner of a homestead.

Property taxes, §26-37-301.

Package.

Cigarettes, §26-57-261.

Export cigarettes, §26-57-262.

Paid.

Income taxes, §26-51-102.

Participating manufacturer.

Tobacco settlement agreement enforcement, §26-57-1302.

Participation.

Financial institution taxes,
§26-51-1402.

Partnership.

State tax procedure, §26-18-104.

Pass-through entity.

Income tax withholding, §26-51-919.

Past-due franchise taxes.

Corporate franchise tax, §26-54-114.

Past officer or director.

Corporate franchise tax, §26-54-114.

Payroll period.

Income taxes.

Withholding, §26-51-902.

Peddler.

County privilege and license taxes,
§26-76-101.

Pensions.

Taxation, §26-1-101.

Person.

Alternative fuels tax, §26-62-102.

Coin-operated amusements tax,
§26-57-402.

Compensating tax, §§26-53-102,
26-53-144.

Estate taxes, §26-59-102.

Financial institution taxes,
§26-51-1402.

Gross receipts tax, §§26-52-103,
26-52-436, 26-52-518.

Income taxes, §26-51-102.

Withholding, §26-51-902.

Manufacturer's investment tax credit,
§26-51-2002.

Motor fuel tax, §26-55-202.

Shipments of motor fuels,
§26-55-601.

Vehicle tank inspections, §26-55-901.

DEFINED TERMS —Cont'd**Person —Cont'd**

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Severance tax credits for certain oil
and gas producers, §26-58-201.

Special excise taxes, §26-63-102.

Special motor fuels taxes, §26-56-102.

State tax procedure, §26-18-104.

Streamlined sales and use tax
agreement, §26-20-102.

Streamlined sales tax administrative
act, §26-21-103.

Taxation, §26-1-101.

Tobacco products tax, §26-57-203.

Vending device sales tax, §26-57-1001.

Vending devices decals, §26-57-1203.

Personal property.

Taxation, §§26-1-101, 26-3-306.

Petroleum products.

Motor fuel tax.

Vehicle tank inspections, §26-55-901.

Pipeline importer.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Place of business.

Soft drink tax, §26-57-902.

Tobacco products tax, §26-57-203.

Place of primary use.

Gross receipts tax, §26-52-315.

Point of severance.

Severance taxes, §26-58-101.

Post consumer waste.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Postpaid calling service.

Gross receipts tax, §26-52-315.

Powder.

Soft drink tax, §26-57-902.

Preconsumer material.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Prepaid authorization number.

Gross receipts tax, §26-52-314.

Prepaid calling service.

Gross receipts tax, §§26-52-314,
26-52-315.

Prepaid telephone calling card.

Gross receipts tax, §26-52-314.

Prepaid wireless calling service.

Gross receipts tax, §26-52-314.

DEFINED TERMS —Cont'd**Prepare.**

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.**Prepared food.**Compensating tax, §§26-53-102,
26-53-145.Gross receipts tax, §§26-52-103,
26-52-317.**Prewritten computer software.**

Compensating tax, §26-53-109.

Gross receipts tax, §26-52-304.

Primary activity.

Gross receipts tax.

Timber harvesting equipment,
§26-52-431.**Primary processor.**

Severance taxes, §26-58-101.

Principal base of operations.Financial institution taxes,
§26-51-1402.**Private car company.**

Taxation, §26-26-1701.

Private communication service.

Gross receipts tax, §26-52-315.

Private lands restoration committee,
§26-51-1503.**Processing.**

Gross receipts tax, §26-52-402.

Producer.

Severance taxes, §26-58-101.

**Production and processing
equipment.**

Gross receipts tax.

Steel mill tax incentives, §26-52-911.

Income taxes.

Steel mill tax incentives,
§§26-51-1202, 26-51-1211.**Project.**Manufacturer's investment tax credit,
§26-51-2002.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.Water resource conservation and
development, §26-51-1003.**Project costs.**Water resource conservation and
development, §26-51-1003.**Promoter.**

Gross receipts tax, §26-52-518.

Proof of age.Cigarettes and tobacco products,
§26-57-257.**Property owner.**

Property taxes, §26-26-1122.

DEFINED TERMS —Cont'd**Prosthetics.**

Gross receipts tax, §26-52-433.

Public highways.

Motor fuel tax, §26-55-202.

Public utility.

Income taxes.

Division of income for tax purposes,
§26-51-701.

Multistate tax compact, §26-5-101.

Purchase.

Alternative fuels tax, §26-62-102.

Compensating tax, §26-53-102.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Purchaser.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Severance taxes, §26-58-101.

Streamlined sales tax administrative
act, §26-21-103.**Qualified biotechnology enterprise.**

Income tax, §26-51-815.

Qualified educational institution.

Income taxes.

Donations or sales of equipment to
educational institutions,
§26-51-1101.**Qualified education program.**

Income taxes.

Donations or sales of equipment to
educational institutions,
§26-51-1101.**Qualified escrow fund.**

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.Tobacco settlement agreement
enforcement, §26-57-1302.**Qualified individual.**

Child care tax credit, §26-51-502.

Qualified manufacturer of steel.

Gross receipts tax.

Steel mill tax incentives,
§§26-52-901, 26-52-911.

Income taxes.

Steel mill tax incentives,
§§26-51-1211, 26-51-1212.**Qualified museum.**

Compensating tax, §26-53-146.

Gross receipts tax, §26-52-440.

Qualified museum facility.

Compensating tax, §26-53-146.

Gross receipts tax, §26-52-440.

DEFINED TERMS —Cont'd**Qualified project.**

Low income housing tax credit,
§26-51-1701.

Qualified research expenditures.

Income taxes.

Donations or sales of equipment to
educational institutions,
§26-51-1101.

Qualified research program.

Income taxes.

Donations or sales of equipment to
educational institutions,
§26-51-1101.

Qualified small business.

Income taxes, §26-51-1801.

Qualified small business net capital gain.

Income taxes, §26-51-1801.

Qualified small business stock.

Income taxes, §26-51-1801.

Qualified technology-based enterprise.

Income tax, §26-51-815.

Qualified technology incubator client.

Income tax, §26-51-815.

Qualified university.

Community colleges.

Countywide sales and use tax for
capital improvements,
§26-74-601.

Qualifying purchase.

Gross receipts taxes, §26-52-523.

Qualifying widow or widower.

Income tax, §26-51-301.

Racing winnings.

Income tax, §26-51-1302.

Real property.

Taxation, §26-1-101.

Real property owned.

Financial institution taxes,
§26-51-1402.

Reappraisal.

Uniform system of real property
assessment, §26-26-1901.

Reason to know.

Taxation.

Spousal relief, §26-18-708.

Received.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

Recharge.

Gross receipts tax.

Prepaid telephone calling cards,
§26-52-314.

DEFINED TERMS —Cont'd**Recovered material.**

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Recycling.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Refunds.

Collection of delinquent taxes.

Setoff against state tax refund,
§26-36-303.

Regional headquarters.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Regular place of business.

Financial institution taxes,
§26-51-1402.

Released claims.

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.

Releasing parties.

Cigarettes and tobacco products.

Master settlement agreement,
§26-57-260.

Rental.

Gross receipts tax, §26-52-103.

Special excise taxes, §26-63-102.

Research park authority.

Income taxes, donations or sales of
equipment to educational
institutions, §26-51-1101.

Resident.

Estate taxes, §26-59-102.

Income taxes, §26-51-102.

Motion picture incentives, §26-4-203.

Residential.

Gross receipts tax, §26-52-301.

Restricted tobacco products vendor.

Tobacco products tax, §26-57-203.

Retail dealer.

Soft drink tax, §26-57-902.

Retailer.

Soft drink tax, §26-57-902.

Tobacco products tax, §26-57-203.

Retail sale.

Gross receipts tax, §26-52-103.

Return.

State tax procedure, §26-18-104.

Rice straw.

Income tax.

Rice straw tax credit, §26-51-512.

Riparian zone.

§26-51-1503.

DEFINED TERMS —Cont'd**River port.**

Motor fuel tax.

Shipments of motor fuels,
§26-55-601.

Routine maintenance.

Manufacturer's investment tax credit,
§26-51-2002.

Sales and use taxes.

Economic investment tax credit,
§26-52-702.

Sale.

Alternative fuels tax, §26-62-102.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Income taxes.

Division of income for tax purposes,
§26-51-701.

Motor fuel tax, §26-55-202.

Multistate tax compact, §26-5-101.

Soft drink tax, §26-57-902.

Special excise taxes, §26-63-102.

Special motor fuels taxes, §26-56-102.

Sale at retail.

Gross receipts tax, §26-52-103.

Salesperson.

Tobacco products tax, §26-57-203.

Sales price.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Manufactured or modular homes,
§26-52-801.

Sales tax.

County sales tax for capital
improvements, §26-74-303.

Multistate tax compact, §26-5-101.

Streamlined sales and use tax
agreement, §26-20-102.

Savings and loan association.

State taxes, §26-50-101.

Taxation, §26-26-1502.

Seller.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Streamlined sales and use tax
agreement, §26-20-102.

Streamlined sales tax administrative
act, §26-21-103.

Semitrailer.

Compensating tax, §26-53-144.

Gross receipts tax, §26-52-436.

Service address.

Gross receipts tax, §26-52-315.

Setoff.

Collection of delinquent taxes.

Setoff against state tax refund,
§26-36-303.

DEFINED TERMS —Cont'd**Sever.**

Severance taxes, §26-58-101.

Severance tax.

Credits for certain oil and gas
producers, §26-58-201.

Short-term rental.

Special excise taxes, §26-63-102,
26-63-301.

Simple syrup.

Soft drink tax, §26-57-902.

Single transaction.

Gross receipts taxes, §26-52-523.

Soft drink.

Taxation, §26-57-902.

Solid waste.

Income taxes.

Tax credit for waste reduction, reuse
or recycling equipment,
§26-51-506.

Special events.

Gross receipts tax, §26-52-518.

Tourism special excise tax, §26-63-401.

Special events vendor.

Gross receipts tax, §26-52-518.

Stamps.

Tobacco products tax, §26-57-203.

Standard fuel tank.

Border tax rate areas, §26-55-212.

State.

Multistate tax compact, §26-5-101.

Streamlined sales and use tax
agreement, §26-20-102.

State bank.

State taxes, §26-50-101.

Taxation, §26-26-1502.

State-of-the-art-machinery and equipment.

Income taxes.

Donation or sales of equipment to
educational institutions,
§26-51-1101.

State tax.

Procedure, §26-18-104.

State tax law.

Procedure.

Generally, §26-18-104.

Storage.

Compensating tax, §26-53-102.

Subdivision.

Multistate tax compact, §26-5-101.

Substantially.

Gross receipts tax, §26-52-402.

Substantially connected.

Corporate franchise tax, §26-54-114.

Supplier.

Special motor fuels taxes, §26-56-102.

DEFINED TERMS —Cont'd**Syndication.**

Financial institution taxes,
§26-51-1402.

Syrup.

Soft drink tax, §26-57-902.

Tangible personal property.

Compensating tax, §26-53-102.

Estate taxes, §26-59-102.

Gross receipts tax, §26-52-103.

Special excise taxes, §26-63-102.

Tangible personal property in transit through this state.

Tax assessments, §26-26-1102.

Tangible personal property owned.

Financial institution taxes,
§26-51-1402.

Tax.

Multistate tax compact, §26-5-101.

Taxable.

Financial institution taxes,
§26-51-1402.

Taxable service.

Compensating tax, §26-53-102.

Taxable year.

Income taxes, §26-51-102.

Tax collector.

Unit tax ledger system, §26-28-203.

Tax deficiency.

State tax procedure, §26-18-104.

Taxpayer.

Coal mining income tax credit,
§26-51-511.

Compensating tax, §26-53-102.

Gross receipts tax, §26-52-103.

Income taxes, §26-51-102.

Withholding, §26-51-902.

Low income housing tax credit,
§26-51-1701.

Multistate tax compact, §26-5-101.

Special excise taxes, §26-63-102.

State tax procedure, §26-18-104.

Tax payment addendum format.

Electronic funds transfers, §26-19-107.

Tax period.

Gross receipts tax, §26-52-103.

Tax return preparer.

State tax procedure, §26-18-104.

Tax year.

Income taxes, §26-51-102.

Terminal.

Motor fuel tax, §26-55-202.

Special motor fuels taxes, §26-56-102.

This state.

Multistate tax compact, §26-5-101.

Timber.

Severance taxes, §26-58-101.

DEFINED TERMS —Cont'd**Timber lands.**

Taxation, §26-61-102.

Time of severance.

Severance taxes, §26-58-101.

Tobacco.

Compensating tax, §§26-53-102,
26-53-145.

Gross receipts tax, §§26-52-103,
26-52-317.

Tobacco product.

Tobacco products tax, §26-57-203.

Tobacco product manufacturer.

Master settlement agreement,
§26-57-260.

Tobacco settlement agreement
enforcement, §26-57-1302.

Tobacco product vending machine.

Tobacco products tax, §26-57-203.

To pay taxes by electronic funds transfer, §26-19-107.**Tourist attraction.**

Tourism special excise tax, §26-63-401.

Tourist attractions and facilities, §26-75-701.**Town.**

Taxation, §26-1-101.

Toy.

Coin-operated amusements tax,
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